

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

January 9, 2015

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

Hawai'i

Forfeiture of General Lease No. S-4665, DMS Diesel Repair, LLC, Waiakea,
South Hilo, Hawaii, Tax Map Key: (3) 2-2-037:098.

PURPOSE:

Forfeiture of General Lease No. S-4665, DMS Diesel Repair, LLC, a Hawaii Limited
Liability Company, Lessee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands identified as Lots 6 & 8, Block 40, Waiakea Industrial Lots,
situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-037:098,
consisting of approximately 44,374 square feet, as shown on the attached map labeled
Exhibit A.

AREA:

44,374 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:

General industrial purposes.

TERM OF LEASE:

55 years, commencing on 8/28/1980 and expiring on 8/27/2035. Last rental reopening was August 28, 2010; next rental reopening is scheduled for August 28, 2020.

ANNUAL RENTAL:

\$40,000.00 due in quarterly 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-4665, DMS Diesel Repair, LLC, Lessee, was served a Notice of Default by certified mail dated May 2, 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 May 5, 2013, offered the Lessee a sixty-day cure period to correct the default. This cure period expired on July 5, 2014. As of **December 12, 2014**, this breach has not been cured.

Lessee was also served a Notice of Default by certified mail dated September 9, 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 September 10, 2014, offered the Lessee a sixty-day cure period to correct the default. This cure period expired on November 10, 2014. As of December 12, 2014, this breach has not been cured.

Lessee was also served a Notice of Default by certified mail dated October 30, 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 November 6, 2014, offered the Lessee a sixty-day cure period to correct the default. This cure period will expire on January 6, 2015. As of December 12, 2014, this breach has not been cured.

As of **December 12, 2014**, the current status of all lease compliance items is as follows:

RENT: The Lessee has a rental delinquency of **\$45,000.00** for the time period from **February 28, 2014** to **February 27, 2015**.

INSURANCE: The Lessee has posted the required liability and fire insurance policies.

PERFORMANCE BOND:

The Lessee **has not** posted the required performance bond.
(80,000.00)

Within the past four years, the Lessee has been issued notices of default for rent on eight (8) separate occasions. Most of the defaults were cured within the sixty (60) day cure period. A special installment agreement (SIA) in the amount of \$10,900 was approved (as amended) by the Board at its meeting of September 28, 2011 under agenda item D-3. The SIA was cured July 17, 2012.

The most recent payment in the amount of \$5,000 was received on November 26, 2014, bringing the outstanding balance due to \$35,000.00. However, another quarterly charge of \$10,000.00 was due November 28, 2014. No further payments have been received to date. The current outstanding balance due is \$45,000.00.

Due to the Lessee's continued breach of the terms and conditions of the lease, staff is recommending that the Board authorize the cancellation of General Lease No. S-4665.

RECOMMENDATION: That the Board:


1. Authorize the cancellation of General Lease No. S-4665 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-4665 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 9, 2015, 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-4665 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,



Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



EXHIBIT A

TMK: 3RD/2-2-37:98

