State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of State Parks
Honolulu, Hawai'i 96813

February 28, 2020

Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Kaua'i

Forfeiture of General Lease No. SP-0112, James Hackett, Lessee, Recreation Residence Lot 91 of Waimea (Kona), Island of Kaua'i, Hawai'i, Tax Map Key No: (4)1-4-004:048

APPLICANT:

Forfeiture of General Lease No. SP-0112, James Hackett, Lessee.

LEGAL REFERENCE:

Section 171-39, Hawai'i Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kōke'e State Park, Waimea (Kona), Kaua'i, Hawai'i, Tax Map Key: (4)1-4-004:048 as shown on the attached map labeled Exhibit A.

AREA:

Existing site is approximately .58 acres, more or less

ZONING:

State Land Use District: Conservation
County of Kaua'i LUO: P-1

TRUST LAND STATUS:

Section 5(b) lands of the Hawai'i Admission Act
DHHL 30% entitlement lands pursuant to the Hawai'i State Constitution: No

CHARACTER OF USE:

Recreation Residence encumbered by Governor's Executive Order No. 2209.

TERM OF LEASE:

20 years, commencing on January 1, 2009 and expiring on December 31, 2028.

ANNUAL RENTAL:

$6,800.00 per annum

BACKGROUND:

Early in 2019, Parks staff conducted a partial inventory of the recreational cabins in Kōke'e and noted a number of issues with the subject property at Lot 91. Specifically, the condition of the grounds, presence of rubbish, abandoned vehicles, unauthorized construction and signs of continuous occupancy exceeding ninety (90) consecutively. During the inspection a Mr. Pi Aguon was present and revealed he was the current lease holder, despite no authorization in the files. He claims Ms. Thorne Clarke, Mr. Hackett's caretaker, transferred the lease approximately in 2012.

General Lease SP-0112 was signed on January 6, 2009 by James Hackett and c/o Thorne Clarke, P.O. Box 801, Naalehu, Hawai'i, 96772, hereinafter referred to as the Lessee. Ms. Clarke became the point of contact for Mr. Hackett because she lived on the island.

February 2012 our records show that Ms. Clarke requested a change to the notice address and to list Mr. Arguon as the caretaker. The request was denied in 2012 because she had no rights under the lease (SP0112). However, it seems Ms. Clarke disregarded the letter and proceeded to "transfer" the lease to Mr. Aguon.

Despite the unauthorized "transfer" by Ms. Clarke and claims of Mr. Aguon, Mr. Hackett remains the holder of the lease. Therefore, staff sent to the lessee's notice address and has made several attempts to call Mr. Hackett to resolve compliance issues but have been unsuccessful.

The following letters were sent but returned to sender (DLNR-State Parks), attempted – not known and unable to forward. The letters are attached as EXHIBITS B, B-2, B-3, B-4 and B-5.

On February 5, 2019, State Parks sent a courtesy letter to Mr. Hackett to provide State Parks with a duplicate Certificate of Insurance (COI) evidencing the required coverage and informed him that failure to act could result in further action.

On March 22, 2019, State Parks issued a Notice of Default addressing the current compliance issues:

RENT:

The Lessee has a rental delinquency of $9,327.00 for the time period from January 1, 2018 to March 1, 2019, as described in the NOD. An additional amount of $7,363.50 [including the annual rental amount of $6,800.00, water fees of $13.50 and $550.00 of late fees] has accrued since the issuance of the NOD.

INSURANCE:

The Lessee has not posted the required liability and fire insurance policy.

REAL PROPERTY TAXES:

State Parks received a statement from the County of Kaua'i for real property taxes for TMK: (4) 1-4-004:048; Lot 91, Mr. Hackett balanced owed in the amount of $6,237.05, attached as Exhibit C.

Again the NOD was not accepted by Lessee and returned to State Parks.

On December 20, 2019, Mr. Hackett phoned our office requesting to pay the balance on his General Lease SP-0112 and provide the required insurance. He explained that he took a job that relocated him to the Philippines and had lost communication with Ms. Thorne Clarke whom he had left as the caretaker. Mr. Hackett was unaware that she had moved back to the mainland and had transferred her obligations as a caretaker to Mr. Pi Aguon. Mr. Hackett said he would reach out to Mr. Aguon to resolve the confusion over the ownership of the lease.

Mr. Hackett has yet to send payment or submit the required insurance and is still in default.

PM would recommend to terminate the current Lease with Mr. Hackett.

RECOMMENDATION: That the Board:

1. Authorize the cancellation of General Lease No. SP-0112 in the manner specified by law;

2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. SP-0112 to be applied to any past due amounts;

3. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective immediately, provided that any and all obligations of the Lessee which have accreued 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. SP-0112 and to pursue all other rights and remedies as appropriate.

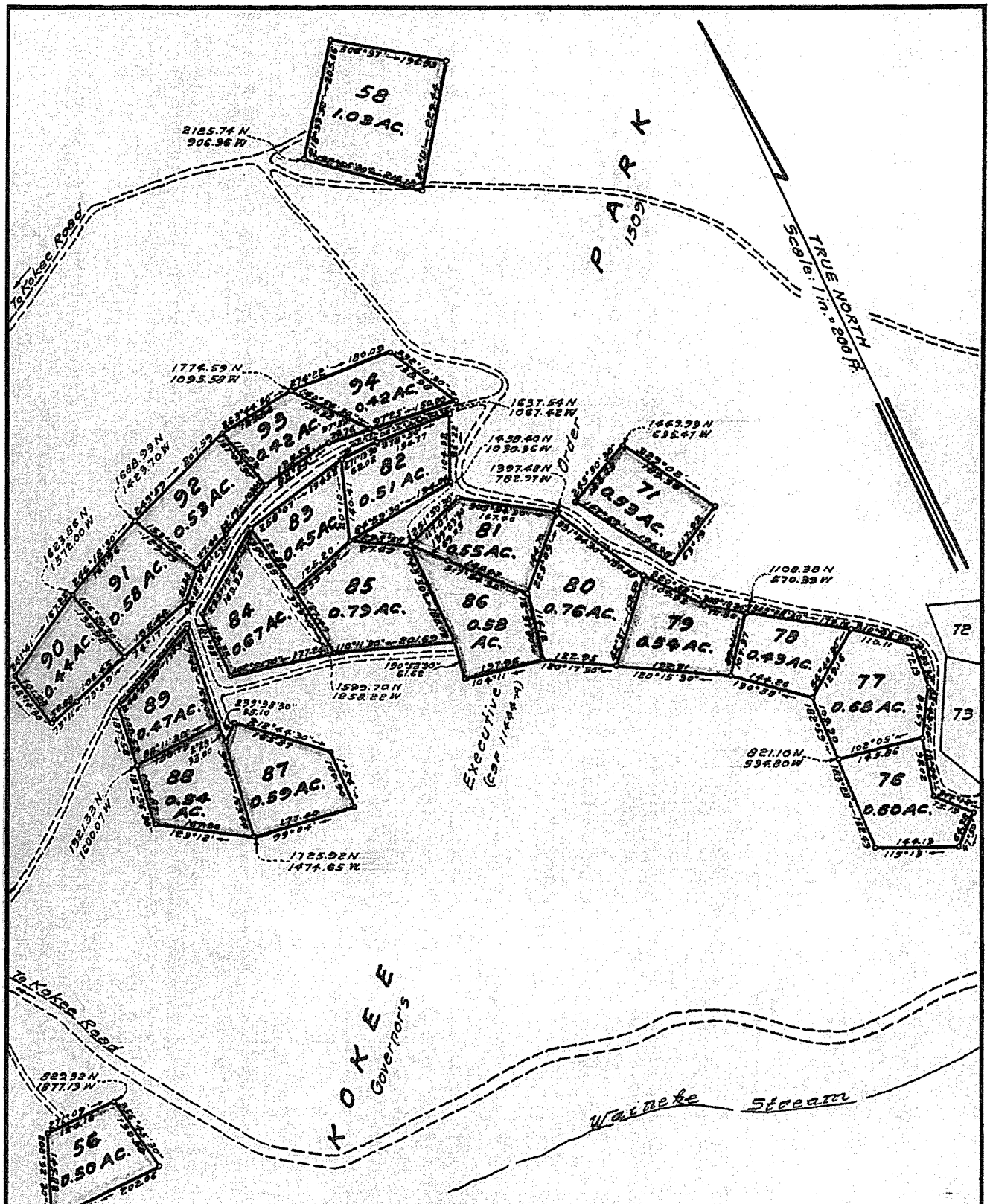
Respectfully submitted,

FOR CURT A. COTTRELL
State Parks Administrator

APPROVED FOR SUBMITTAL:

SUZANNE D. CASE
Chairperson

ATTACHMENTS:
Exhibit A – Location
Exhibit B – B5, Notices/Letters
Exhibit C – Statements of Real Property Taxes



KOKEE CAMP SITE LOTS

LOTS 56, 58, 71, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93 AND 94

Waimea, (Kona) Kauai, Hawaii.

Scale: 1 inch = 200 feet

EXHIBIT A

JOB K-3626
C. BK

All corners marked with pipes
Coordinates referred to "KOKEE" A

TAX MAP 1-4-04
KAUAI FILE
FOLDER 3

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

Sheet 7 of 7 Sheets

A.T. Nov. 2, 1966

DAVID Y. IGE
GOVERNOR OF
HAWAII

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

DEAN D. UYENO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF STATE PARKS
1151 PUNCHBOWL STREET, RM 310
HONOLULU, HAWAII 96813

Ref. #: 190001

February 5, 2019

Mr. James Hackett
c/o Mr. Thorne Clark
P.O. Box 377529
Ocean View, HI 96737

Re: SP 0112 – Koke'e, Lot 91
Waimea, Kona, Kaua'i
TMK: (4)1-4-004:048

Dear Mr. Hackett & Mr. Clark,

A review of your file by the Division of State Parks (DSP) indicates your account has not posted the required Certificate of Insurance (COI).

Please provide DSP with a duplicate COI evidencing the required coverage is currently in force. Failure to act may result in further action.

Please give this request your prompt attention. Should there be any questions on this matter, please contact Ms. Keiki Kipapa of our Property Management Section at (808) 587-0289.

Sincerely,

for Curt A. Cottrell
Administrator

EXHIBIT B

DAVID Y. IGE
GOVERNOR OF
HAWAII

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF STATE PARKS
1151 PUNCHBOWL STREET, RM 310
HONOLULU, HAWAII 96813

March 22, 2019

PM 19.0008
SP-0112

Sent Via Regular Mail
Sent Certified Mail

Mr. James Hackett
C/O Mr. Thorne Clarke
P.O. BOX 377529
Ocean View, HI 96737

Dear Mr. Clarke,

NOTICE OF DEFAULT

Pursuant to the authority granted me by the Board of Land and Natural Resources at its meeting of July 25, 2008 and the breach provision contained in General Lease SP-0112, you are hereby served a Notice of default, on said lease for failure to do the following:

X Keep lease rental payments current

X Post Required Fire Insurance Policy

X Post required Liability Insurance Policy

Our Fiscal Office informs us that you are in arrears in lease rental payments in the amount of $9,327.00 covering the period 3/1/2019.

You are hereby given thirty (30) days from the date of receipt of this letter to cure the above-described breach.

Your failure to act on the above matter may result in the following:

1. Cancellation of General Lease SP-0112.

EXHIBIT B-2

2. Retention of all sums heretofore paid under General Lease SP-0112 as liquidated damages.

3. Termination of all your rights and obligations under General Lease No. SP-0112.

4. Initiation of legal action to collect the delinquent lease rental owing the State of Hawaii under General Lease SP-0112.

5. Forfeiture of your lease performance bond.

We therefore urge your fullest cooperation. Should you have any questions, please contact our Property Manager Keiki, E. Kipapa at (808) 587-0289.

Sincerely,

Suzanne D. Case
Chairperson

CERTIFIED MAIL®

AFTER 5 DAYS, RETURN TO
DEPT. OF LAND AND NATURAL RESOURCES
DIVISION OF STATE PARKS
P.O. BOX 621
HONOLULU, HAWAII 96809

7016 2710 0000 8735 6513

neopost
03/27/2019
US POSTAGE $006.80⁰

ZIP 96813
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RECEIVED
STATE PARKS DIV
'19 APR 17 AM

Mr. James Hackett
c/o Mr. Thorne Clarke
P.O. Box 377529
Ocean View, HI 96737

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NIXIE 968 FE 1 0004/15/19
RETURN TO SENDER
ATTEMPTED - NOT KNOWN
UNABLE TO FORWARD

ANK BC: 96809062121 *0372-05834-27-40

DAVID Y. IGE
GOVERNOR OF
HAWAII

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

DEAN D. UYENO
ACTING DEPUTY DIRECTOR - WATER

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STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF STATE PARKS
1151 PUNCHBOWL STREET, RM 310
HONOLULU, HAWAII 96813

May 7, 2019

PM 19.0004
GL No. SP0112

Mr. James F. Hackett
C/O Thorne Clarke, C/O Pi Aquon
P.O. BOX 943
Kekaha, HI 96752

Aloha Mr. Hackett:

Representatives from the State of Hawaii Department of Land and Natural Resources Division of State Parks made a visit to Kokee State Park to inventory the various Kokee Cabin Dispositions. The visit was prompted by the hire of a new Property Manager, Keiki Kipapa.

The visit revealed a number of issues regarding the condition of the improvements, the grounds, the presence of trash and abandoned vehicles, the presence of animals and evidence of residency.

Preservation of the historic residence and area is a community wide goal. As a reminder, Lessee shall not construct, place, or install on the premise any additional building, structure of improvements of any kind and description nor shall Lessee demolish, remove, modify, or relocate any existing building or structure except without the prior written approval of the Chairperson. Any new construction, improvement, rehabilitation, relocation, demolition, or major site work that affects the historic integrity of the historic recreation-residence or the historic district shall be strictly in compliance with residence design standards and guidelines (Design Guidelines). Lessee is further obligated to, as its own expense, keep, repair and maintain all buildings, structures, improvements and landscaping in substantially the same order, condition and repair as upon the commencement of the lease.

As stewards of the land, it is required to obtain prior written consent before any trees are cut down, removed or destroyed. Introduction of noxious and exotic plant species is not permitted absent written approval from the Lessor. In addition, the Chairperson has discretion on the types of animals permissible on site.

EXHIBIT B-3

Abandoned vehicles shall not be stored within the premises. It is advised to take the necessary corrective measures to provide for their removal. Trash is the responsibility of the Lessee and shall be removed.

The leased premises shall be used solely for recreation-residence purposes. The use shall be occasional and not exceeding ninety (90) consecutive days. Year-round occupancy of the premises is strictly prohibited and no more than one hundred eighty (180) total days shall be used. There shall be no commercial activity of any kind on the premises nor shall they be advertised for availability or rental. Any renting or subletting of the leased premises is strictly prohibited. Lessor may demand copies of any and all of Lessee's tax records and returns to verify compliance.

Protection of the historic recreation residence is vital to the preservation of the historic district. Therefore, the Lessee shall provide copies of current comprehensive general liability insurance, fire and extended coverage insurance and a surety bond. Specific requirements may be obtained in your Lease.

The letter is a reminder to timely take the necessary corrective measures that may be applicable to you. Specifically, please remove all unnecessary clutter on the premises. Refer to attachments. State Park Representatives will be conducting a following up assessment in 45 days and will take additional steps if changes are not evident.

Mahalo,

Curt A. Cottrell, Administrator

encl: Four pictures
cc: District Files

DAVID Y. IGE
GOVERNOR OF
HAWAII

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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BUREAU OF CONVEYANCES
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CONSERVATION AND COASTAL LANDS
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LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF STATE PARKS
1151 PUNCHBOWL STREET, SUITE 310
HONOLULU, HAWAII 96813

September 12, 2019

PM 19.0095
SP0112

James Hackett
P.O. Box 943
Kekaha, HI 96752

SUBJECT: Rental Reopening of Recreation-Residence General Leases covering Pu'u Ka Pele Park, Halemanu and Kōke'e Camp Lots, Waimea, on the Island of Kauai, Hawai'i.

Dear Mr. Hackett:

You are recieving this letter in accordance with your lease agreement commenced on January 1, 2009 which calls for a rental reopening for the remaining ten (10) year period. We have recieved an independent appraisal report which established the fair market annual rental for the period of January 1, 2020 through December 31, 2028 to be $6,800.00 per annum.

If you agree to the new annual rental, please acknowledge this by signing in the space provided below and return a signed copy to this office.

If you do not agree to the new annual rental, Hawai'i Revised Statues, Chapter 658 provides the necessary guidance for lease rental arbitration. Briefly, you will contract the services of a real estate appraiser. He/she will meet with the State's appraiser to try to resolve any differences. If they are unable to, then a third real estate appraiser, paid by both parties will be contracted. The decision worked out by these three individuals will be final and binding to all partiers.

Please respond by September 27, 2019. If we do not hear from you by then, we will conclude you have accepted the new lease rent of $6,800.00 per annum and we will instruct our Fiscal Office to adjust your billing.

EXHIBIT B-4

Should you have any questions please contact Keiki Kipapa at (808) 587-0289.

Sincerely,

Curt A. Cottrell
Administrator

cc: Kauai District
Fiscal Department

_____ ACCEPT _____ REJECT

_____
James Hackett

r

_____
Date

DAVID Y. IGE
GOVERNOR OF
HAWAII

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
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M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF STATE PARKS
1151 PUNCHBOWL STREET, SUITE 310
HONOLULU, HAWAII 96813

October 3, 2019

CERTIFIED MAIL, REQUEST RETURN RECEIPT

PM 19.0095
SP0112

James Hackett
P.O. Box 943
Kekaha, HI 96752

SUBJECT: Rental Reopening of Recreation-Residence General Leases covering Pu'u Ka Pele Park, Halemanu and Kōke'e Camp Lots, Waimea, on the Island of Kauai, Hawai'i.

Dear Mr. Hackett:

You are receiving this letter in accordance with your lease agreement commenced on January 1, 2009 which calls for a rental reopening for the remaining ten (10) year period. We have recieved an independent appraisal report which established the fair market annual rental for the period of January 1, 2020 through December 31, 2028 to be $6,800.00 per annum.

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Please respond in writing within thirty (30) days after certified mail receipt. If you wish to receive a copy of the methodology used in the appraisal report, please refer to: https://dlnr.hawaii.gov/dsp/parks/kauai/kokee-state-park/ or email Ms. Keiki Kipapa at earleen.k.kipapa@hawaii.gov. If we do not hear from you by then, we will conclude you have accepted the new lease rent of $6,800.00 per annum and we will instruct our Fiscal Office to adjust your billing.

EXHIBIT B-5

Should you have any questions please contact Keiki Kipapa at (808) 587-0289.

Sincerely,

Curt A. Cottrell
Administrator

cc: Kauai District
Fiscal Department

_____ ACCEPT _____ REJECT

_____
James Hackett

_____
Date

SUMMARY APPRAISAL DATA: TAX MAP KEY 1-4-04, PARCEL 48

Property Data

Property Location: Kokee.
DLNR Lot Number: 91.
Existing DLNR G.L. No. (Existing Lessee): SP0112 (James Hackett).
Total Assessed Value: $107,700.

Physical Lot Characteristics:

Gross Land Area	0.58 acres; or 25,264 square feet.
Utilities	Water and electricity present.
Lot Shape	Irregular (pentagonal); average width and depth.
Topography	Level.
Landscape Typology	Forest Clearing.
Landscape Condition	Average to Good.
View(s)	Average to Good; surrounding uplands and valley.

Existing Dwelling Improvements:

Year Built	Circa 1959.
Dwelling Areas	Living: 768 sq. ft.; Deck/Patio: 100 sq. ft.
Dwelling Foundation	Wood post on pier.
Exterior Wall Construction	Vertical board.
Roof Construction	Hipped; corrugated metal.
Duensing Rating	Level 1.
Overall Condition	Average to Good.
Additional Structure(s)	None.

Notable Characteristics: Located in "Water Tank Lots" area; open view across valley; landscaping and contemporary dwelling maintained in average to good condition.

Value Conclusions

Fourth Division, Tax Map Key 1-4-04-48.
Effective Date of the Appraisal: January 1, 2020.
Subject Rental Period: 10 Years from January 1, 2020 through December 31, 2029.

Property Rating (Land Only): Rating 3
Concluded Market Ground Rent (Land Only): $4,800.

Property Rating (Land & Buildings): Rating 3
Concluded Market Property Rent (Land & Buildings): $6,800.

AFTER 5 DAYS, RETURN TO
LAND AND NATURAL RESOURCES
DIVISION OF STATE PARKS
P.O. BOX 621
HONOLULU, HAWAII 96809

7016 2710 0000 8735 8791

1000

96752

U.S. POSTAGE
FCM LETTER
HONOLULU HI
96813
OCT 03, 19
AMOUNT
$6.85
R2305K139258-

RECEIVED
STATE PARKS DIV
'19 OCT 21

ANK

JAMES HACKETT
PO BOX 943
KEKAHA, HI 96752

FIRST NOTICE 10/5
SECOND NOTICE
THIRD NOTICE

NTXIF 968 FT 1 0010/17/19

RETURN TO SENDER
ATTEMPTED - NOT KNOWN
UNABLE TO FORWARD

BC: 96809062121 *0472-04175-03-39

96752<0943 ANK
96809>0621 BOO

County of Kauai
Real Property Tax Collection
4444 Rice Street, Suite 463
Lihue, Hawaii 96766
Phone:(808)241-4272
www.kauaipropertytax.com

STATEMENT OF REAL PROPERTY TAXES DUE

HACKETT,JAMES F
C/O CLARK,THOMAS
PO BOX 377529
OCEAN VIEW HI 96737

TAX MAP KEY / PARCEL ID
RP 4-1-4-004-048-0000-001

PENALTY & INTEREST CALCULATED TO:
02/20/2020

DESCRIPTION	YEAR/ CYCLE	TAX DUE DATE	TAX	PENALTY	INTEREST	OTHER	TOTAL
REAL PROPERTY	2019 - 1	08/20/2019	325.80	32.58	21.50	0.00	379.88
REAL PROPERTY	2019 - 2	02/20/2020	325.79	0.00	0.00	0.00	325.79
REAL PROPERTY	2018 - 1	08/20/2018	313.39	31.34	62.05	0.00	406.78
REAL PROPERTY	2018 - 2	02/20/2019	313.39	31.34	41.37	0.00	386.10
REAL PROPERTY	2017 - 1	08/20/2017	293.73	29.37	96.93	0.00	420.03
REAL PROPERTY	2017 - 2	02/20/2018	293.73	29.37	77.54	0.00	400.64
REAL PROPERTY	2016 - 1	08/20/2016	287.08	28.71	132.63	0.00	448.42
REAL PROPERTY	2016 - 2	02/20/2017	287.07	28.71	113.68	0.00	429.46
REAL PROPERTY	2015 - 1	08/20/2015	287.68	28.77	170.88	0.00	487.33
REAL PROPERTY	2015 - 2	02/20/2016	287.68	28.77	151.90	0.00	468.35
REAL PROPERTY	2014 - 1	08/20/2014	287.68	28.77	208.86	0.00	525.31
REAL PROPERTY	2014 - 2	02/20/2015	287.68	28.77	189.87	0.00	506.32
REAL PROPERTY	2013 - 1	08/20/2013	273.42	27.34	234.59	0.00	535.35
REAL PROPERTY	2013 - 2	02/20/2014	273.41	27.34	216.54	0.00	517.29
REAL PROPERTY TOTAL:			4,137.53	381.18	1,718.34	0.00	6,237.05
TOTAL:			4,137.53	381.18	1,718.34	0.00	6,237.05

EXHIBIT C