

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

October 28, 2022

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

Ref: GL 6011

OAHU

Request to Reduce the Performance Bond Requirement; General Lease No. 6011;
4 Wheels Auto LLC, Lessee; Kapalama, Honolulu, Oahu; TMK (1) 1-5-033:022

BACKGROUND:

General Lease No. (GL) 6011 was issued by public auction in 2011 to 4 Wheels Auto LLC (Lessee) for a term of sixty-five (65) years. The leased property has been developed into a used car sale lot. A map showing the location of the subject parcel is attached as **Exhibit A**.

Under the lease, the Lessee is required to post a performance bond equivalent to two times the annual rent. At the commencement of the lease in 2011, the Lessee posted a certificate of deposit for \$220,000. When the annual rent was raised from \$110,000 to \$143,000 in 2021, Lessee provided an additional certificate of deposit for \$66,000, for a total current bond amount is \$286,000. In short, Lessee is in full compliance with the bond requirement.¹

Recently, the Lessee inquired about the possibility of reducing the amount of the performance bond. Currently, the rent is due semiannually in an amount of \$71,500.

Attorney for the Lessee submitted a request dated August 9, 2022 (**Exhibit B**) requesting the Board's consideration of a decrease in the performance bond amount based on his client's 11-year history of timely rental payments.

¹ In May 2011, former Land Board Chairperson approved a rental waiver of \$82,500 (equal to 9 month rent) for construction of a warehouse and office by the Lessee. However, after years of communication with the Lessee no improvements were constructed. Therefore, on March 2, 2022, the Chairperson rescinded the rental waiver and the Lessee was informed of the same on March 28, 2022 that \$82,500 in past rent had now become due and owing. Full payment was received from the Lessee in May 2022.

REMARKS:

Below is paragraph 29 of GL6011 which provides for waiver or modification of the performance bond provision upon substantial compliance by the lessee of the terms, covenants and

29. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee with the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond or improvement bond requirements or both or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to reactivate the bonds or reimpose the bond(s) or liability insurance in and to their original tenor and form at any time throughout the term of this lease.

Since the commencement of the lease, there were three (3) Notices of Default (NOD) issued for lack of insurance, performance bond, and rent. All NODs were rectified in a timely manner and the defaults were corrected.

In view of Lessee's substantially full compliance with the lease since 2005, staff recommends the Board reduce the performance bond requirement to \$71,300, which is equivalent to six months' rent.

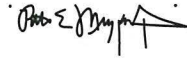
Staff recommends the Board approve the request subject to the condition that in the event the Lessee violates any term or condition of the Lease in the future, then the Chairperson may, with thirty (30) days' written notice, require that the full performance bond (two times the annual rent) be posted. The failure to timely post the required bond shall be deemed a material default and the State may terminate the Lease and pursue all other rights and remedies it may have.

RECOMMENDATION:

That the Board reduce the performance bond requirement for General Lease No. 6011 to an equivalent of six (6) months' rent, further subject to the following:

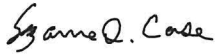
In the event the Lessee violates any term or condition of the Lease in the future, then the Chairperson may, with thirty (30) days' written notice, require that the full performance bond (two times the annual rent) be posted. The failure to timely post the required bond shall be deemed a material default and the State may terminate the Lease and pursue all other rights and remedies it may have.

Respectfully Submitted,



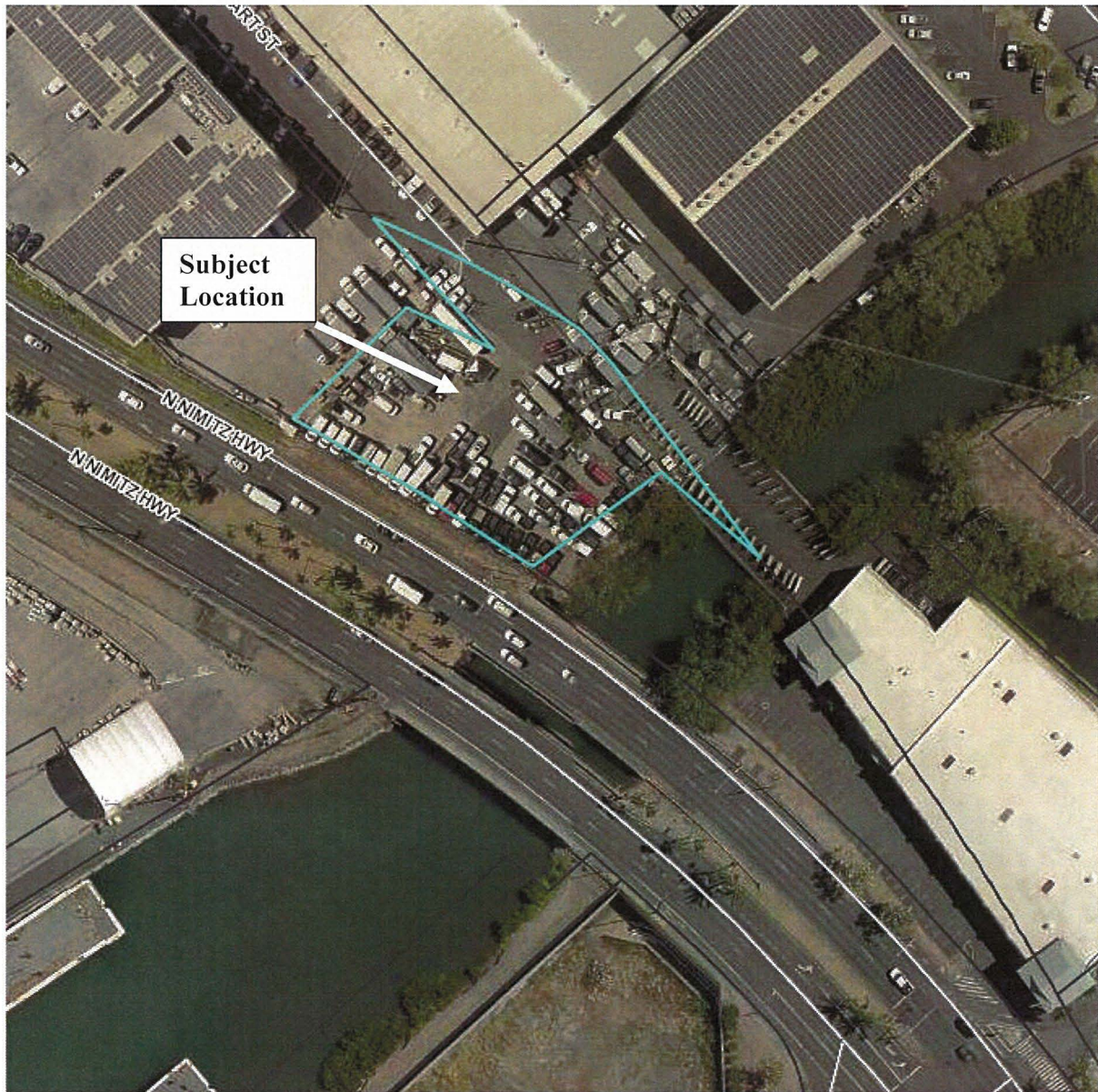
Patti Miyashiro
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson





TMK (1) 1-5-033:022

EXHIBIT A

cades - schutte
A LIMITED LIABILITY LAW PARTNERSHIP

August 9, 2022

Jeffrey S. Portnoy
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813-4212
Direct Line: (808) [REDACTED]
Direct Fax: (808) [REDACTED]
Email: [REDACTED]

VIA REGULAR MAIL

Suzanne D. Case, Chairperson
Board of Land and Natural Resources
Commission on Water Resource Management
PO Box 621
Honolulu, HI 96809

Re: Reference OD-GL 6011

Dear Ms. Case:

I represent 4 Wheels Auto LLC and have been retained to represent it in requesting the Land Board's consideration of a decrease in the Performance Bond based upon my client's perfect eleven year history of timely rental payments.

We have previously spoken to and written to Barry Cheung who has been in touch with my client. He now tells them that any request for a decrease in the Bond must be made directly to the Board.

For your consideration I attach several emails with Mr. Cheung regarding this issue and additional rent issues arising out of the April 28, 2022 and May 9, 2022 letters from The Board.

All payments were made to avoid any default even though my client disputed both notices.

Please advise how we should proceed in pursuing a reduction in the Bond.

Very truly yours,


Jeffrey S. Portnoy
for

CADES SCHUTTE
A Limited Liability Law Partnership

EXHIBIT B

Cynthia Corsi

From: Cheung, Barry W [REDACTED]
Sent: Thursday, July 28, 2022 8:09 AM
To: Jeffrey Portnoy
Cc: '4wheels Auto Llc'
Subject: RE: [EXTERNAL] RE:

Mr. Portnoy

Thanks for your email. Your client's request requires a Land Board action. Therefore, please give us a request with justification/rationale and address to the following:

Suzanne Case, Chairperson
Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

Upon receipt of the request, staff will review the request and prepare Board submittal with any appropriate recommendation. The Board makes the final decision.

Barry

From: Jeffrey Portnoy [REDACTED]
Sent: Friday, July 15, 2022 2:00 PM
To: Cheung, Barry W [REDACTED]
Cc: '4wheels Auto Llc' [REDACTED]
Subject: [EXTERNAL] RE:

I would appreciate a reply to my July 8 email

Jeffrey S. Portnoy
Partner

Cades Schutte LLP
Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, HI 96813
[REDACTED]



From: Jeffrey Portnoy
Sent: Friday, July 8, 2022 11:22 AM
To: 'Cheung, Barry W' [REDACTED]
Cc: '4wheels Auto Lic' [REDACTED]
Subject:

Following up on my earlier emails on behalf of my client, now that they have paid all requested amounts, I renew my request that the performance bond be adjusted to reflect my client's perfect payment history

Jeffrey S. Portnoy
Partner

Cades Schutte LLP
Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, HI 96813
[REDACTED]



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Cynthia Corsi

From: Jeffrey Portnoy
Sent: Monday, May 23, 2022 2:17 PM
To: 'Cheung, Barry W'
Subject: RE: [EXTERNAL]

If we can reach a compromise waiving any additional bond, I believe we can reach an agreement(by additional rent) you mean the amount that was initially waived

Jeffrey S. Portnoy
Partner

Cades Schutte LLP
Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, HI 96813



From: Cheung, Barry W [REDACTED]
Sent: Monday, May 23, 2022 2:10 PM
To: Jeffrey Portnoy [REDACTED]
Subject: Re: [EXTERNAL]

Mr. Portnoy

Can you confirm if your client will pay the \$82,500 rent? That's my understanding when we talked earlier today. Thanks.

Barry

From: Jeffrey Portnoy [REDACTED]
Sent: Monday, May 23, 2022 1:34 PM
To: Cheung, Barry W [REDACTED]
Subject: [EXTERNAL]

Following up on our telephone call today, I represent 4 wheels auto and in receipt of two letters from the ILnd Board, one dated april 28 regarding a performance bond and one dated May 9 regarding lease payments. As I explained, my client has a perfect record for 11 years of making timely rent payments. To now require him to increase his performance bond because of an increase in the rent. The State already has a Bond in excess of 200,000 and an increase does not appear to be justified or warranted in light of bond already in place. As far as the 82,5000 dollar demand because my client did not commence construction of " improvements", the facts are that he has spent over 170,000 in improvements, including a fence, new concrete flooring, etc. It is true he has not commenced the construction of a building, some of that the result of Covid. However, my client would like to reach a compromise on these issues and

requests that the issues be reviewed and adjusted by the staff and/ or the Board. If necessary, I ask for an opportunity to appear before the Board to discuss. Please pass on this email to the appropriate Land Board representative

Jeffrey S. Portnoy
Partner

Cades Schutte LLP
Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, HI 96813



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Cynthia Corsi

From: Jeffrey Portnoy
Sent: Wednesday, May 25, 2022 2:26 PM
To: '4wheels Auto LLC'
Subject: FW: [EXTERNAL]

Call me on this please

Jeffrey S. Portnoy
Partner

Cades Schutte LLP
Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, HI 96813



From: Cheung, Barry W [REDACTED]
Sent: Wednesday, May 25, 2022 2:14 PM
To: Jeffrey Portnoy [REDACTED]
Subject: Re: [EXTERNAL]

Mr. Portnoy

Currently, there are two outstanding Notices of Default (NODs) that need to be cured by the respective dates provided in the NODs. Your client needs to be in full compliance (pay amounts owed and bring the bond up to the required amount by this auctioned lease). Only upon your client coming into full compliance will we consider your client's request to lower the performance bond to an amount equal to twice the annual rental rate that existed prior to the last reopening. If your client does not bring the lease into full compliance by the respective dates in the NODs, we will proceed as stated in the two NODs.

Barry

From: Jeffrey Portnoy [REDACTED]
Sent: Monday, May 23, 2022 2:17 PM
To: Cheung, Barry W [REDACTED]
Subject: RE: [EXTERNAL]

If we can reach a compromise waiving any additional bond, I believe we can reach an agreement (by additional rent) you mean the amount that was initially waived

Jeffrey S. Portnoy
Partner

Cades Schutte LLP
Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, HI 96813



From: Cheung, Barry W [REDACTED]
Sent: Monday, May 23, 2022 2:10 PM
To: Jeffrey Portnoy [REDACTED]
Subject: Re: [EXTERNAL]

Mr. Portnoy
Can you confirm if your client will pay the \$82,500 rent? That's my understanding when we talked earlier today. Thanks.

Barry

From: Jeffrey Portnoy <[REDACTED]>
Sent: Monday, May 23, 2022 1:34 PM
To: Cheung, Barry W <[REDACTED]>
Subject: [EXTERNAL]

Following up on our telephone call today, I represent 4 wheels auto and in receipt of two letters from the ILnd Board, one dated april 28 regarding a performance bond and one dated May 9 regarding lease payments. As I explained, my client has a perfect record for 11 years of making timely rent payments. To now require him to increase his performance bond because of an increase in the rent. The State already has a Bond in excess of 200,000 and an increase does not appear to be justified or warranted in light of bond already in place. As far as the 82,5000 dollar demand because my client did not commence construction of "improvements", the facts are that he has spent over 170,000 in improvements, including a fence, new concrete flooring, etc. It is true he has not commenced the construction of a building, some of that the result of Covid. However, my client would like to reach a compromise on these issues and requests that the issues be reviewed and adjusted by the staff and/ or the Board. If necessary, I ask for an opportunity to appear before the Board to discuss. Please pass on this email to the appropriate Land Board representative

Jeffrey S. Portnoy
Partner

Cades Schutte LLP
Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, HI 96813

Cynthia Corsi

From: 4wheels Auto Llc [REDACTED]
Sent: Friday, May 20, 2022 2:18 PM
To: Jeffrey Portnoy
Subject: Fwd: GL 6011 - Performance bond
Attachments: GL6011--OriginalDocument-2011-05-01.pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Cheung, Barry W" [REDACTED]
Date: May 18, 2022 at 8:14:38 AM HST
To: 4 Wheels Auto Llc [REDACTED]
Subject: GL 6011 - Performance bond

Mrs. Modaresi

Following up to our conversation regarding the NOD for the performance bond. You can find condition 18 on page 9 of the lease (copy attached) in which we ask for a performance bond in an amount equal to two times the annual rental. Annual rent for the subject lease was raised from \$110,000 to \$143,000 effective May 1, 2021. Currently, you have a CD with us in the amount of \$220,000. Therefore, please provide document showing that the deposit in the CD has been raised to \$286,000 (based on \$143,000 x 2). You can ask your banker send the relevant document to me through email. Any questions, please let me know. Thanks.

Barry