

**HB 1593  
RELATING TO REAL PROPERTY**

**PAUL T. OSHIRO  
MANAGER – GOVERNMENT RELATIONS  
ALEXANDER & BALDWIN, INC.**

**FEBRUARY 19, 2009**

Chair McKelvey and Members of the House Committee on Economic Revitalization, Business & Military Affairs:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on HB 1593, "A BILL FOR AN ACT RELATING TO REAL PROPERTY." We respectfully oppose this bill.

This bill establishes various conditions on long term leases for commercial and industrial properties. As leases for commercial and industrial properties reflect contractual business decisions between a lessor and a lessee, we have concerns with the impact that this bill may have upon the scope within which leases may be negotiated and executed. This bill will limit the ability to freely negotiate leases in a manner that best suits the business requirements of both the lessor and the lessee. Agreements to provide lower lease rents at the beginning of a long term lease to allow the lessee to grow their business in exchange for a long term commitment by the lessee to maintain and improve the property may no longer be feasible under the provisions of this bill. By prohibiting the enforcement of higher standards for the repair, maintenance, and surrender, the overall maintenance of properties may decline, impacting both subject property and the surrounding community.

As presently drafted, the bill appears to also apply to current leases in effect prior to the effective date of this bill. We understand that changing contractual obligations in existing leases may give rise to questions of constitutionality.

Based on the aforementioned, we respectfully request that this bill be held in Committee.

Thank you for the opportunity to testify.



P.O. Box 4319, Honolulu, Hawaii 96812

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www.GPRoadwaySolutions.com

To: Representative Angus L.K. McKelvey, Chair  
Representative Isaac W. Choy, Vice Chair  
Committee Members  
House Committee on Economic Revitalization, Business, & Military Affairs  
State Capital  
Honolulu, Hawaii 96812

From: William A. Paik  
President, GP Roadway Solutions

Re: HB 1593 Re: Real Property – Testimony in Support  
Hearing Date: Thursday February 19, 2009, 9:30 a.m., Room #312

In Support of SB 764, Relating to Real Property

My name is William Paik and I live in Kaimuki. I am the President of GP Roadway Solutions and our business is located at 660 Mapunapuna Street. We hold ground leases on four parcels, totaling 140,000 square feet. We are a statewide contractor for guardrail and highway signs.

I am well aware of the tough times we are facing with layoffs and business closings all around us. Our business volume is down and we are looking for ways to cut costs to avoid having to layoff our workers. The ground lease rent for my business is our biggest fixed cost. We cannot afford to pay double or triple our current rent, as our landlord would like to think.

The language of our lease calls for rent that is fair and reasonable for both sides. This bill will require our mainland landowner to consider not only what works for them, but also what works for my business.

Action is needed now. There are a number of lease negotiations occurring right now that could hurt Hawaii's economy. We don't need any more bad news. I urge you to pass HB 1593.

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February 18, 2009

Representative Angus L.K. McKelvey, Chair  
Representative Isaac W. Choy, Vice-Chair  
House Committee on Economic Revitalization, Business, & Military Affairs  
State Capitol  
Honolulu, HI 96813

**Re: HB 1593 Re: Real Property - Testimony in Support**  
**Hearing Date: February 19, 2009, 9:30 a.m., Room #312**

Dear Representatives McKelvey and Choy and Members of the Committee:

My name is Phillip John Silich, President & CEO and my company, Bacon Universal Company, Inc., is presently a lessee in Mapunapuna under an original lease with Damon Estate dating from 1967. Bacon has been in business in Hawaii for over sixty years.

Bacon owns and operates a retail heavy machinery and agriculture business which specializes in providing new, used and rental equipment as well as parts and service. Bacon is headquartered in Mapunapuna with branch operations in Kauai, Maui, Kona and Hilo. As of today, Bacon employs approximately 80 people: 45 of which are located in Mapunapuna with the balance in our other branches. Seven of my employees have been with the company in excess of 20 years and 5 for over 30 years.

Our customer base naturally comprises general contractors, builders, excavators, site work contractors, developers, and basically anyone involved in the earth moving and farming operations. We have a 35,000 sq. ft. warehouse, office and engineering workshop development on our 72,072 sq. ft. lot located on the corner of Ahua and Mokumoa Street. The buildings are worth approximately \$3.5 to \$4 million dollars assuming of course, that we are able to retain and afford our long-term ground lease. Bacon also has two additional lots on Mokumoa Street which we use to store our equipment and provide parking for our customers and staff. These two lots equal approximately one acre of land.

Although my lease covering the corner of Ahua and Mokumoa Street is not due for a renegotiation in the immediate future, my two lots in Mokumoa Street are scheduled for renegotiation in 18 month's time. These upcoming negotiations will not be with the Damon Trust, the original land owner, but with HRPT, a mainland-based real estate

investment trust (REIT), who purchased the land roughly 5 years ago. Along with my fellow lessees in the Mapunapuna, Sand Island and Kalihi areas, we are very concerned because the current renegotiation rates being set by HRPT are simply beyond our ability to pay.

I believe the plight of our company and that of my colleagues is best illustrated by the under noted example:

a. The Mapunapuna area comprising about 200 acres of land and is a filled in former swamp. On high tide the ocean floods the intersection just off Nimitz Highway and Ahua Street to a depth of about 22 inches of water. Potential customers and workers are forced to either go away or negotiate their way around the various side streets to avoid damage from the brackish water to their vehicles. The entire area is subject to subsidence with the resultant cracking of walls, buildings and other problems associated with low lying lands. Meanwhile, HRPT is doubling the rents to between \$8 and \$10 per sq foot with a 4% annual escalating component. This compares with the current average rental rate of \$3.70 to \$4 per square foot for more than a 100% increase!!!

b. Now let us compare this rental rate to a prime location on Nimitz Highway (the former site occupied by the Jackson Auto Group) which is close to Mapunapuna but high and dry and not subject to flooding. This property faces Nimitz Highway with approximately 120,000 to 140,000 vehicles passing each way each day and has multiple entry and egress points. Loyalty Group, a long established Hawaiian family of property developers is offering this location at \$6.24 per sq ft inclusive of the buildings and all development. My real estate colleagues tell me this translates in today's values at approximately \$5 per sq. ft. land only for a premier location. This would then by deduction put the value of Mapunapuna in the range of \$3.50 to \$4.50 per sq. ft.

c. If one compares the HRPT extortionate rate of \$9.25 with a comparable valuation of say \$4.00 per sq. ft. per annum, you will clearly appreciate the lessees concerns.

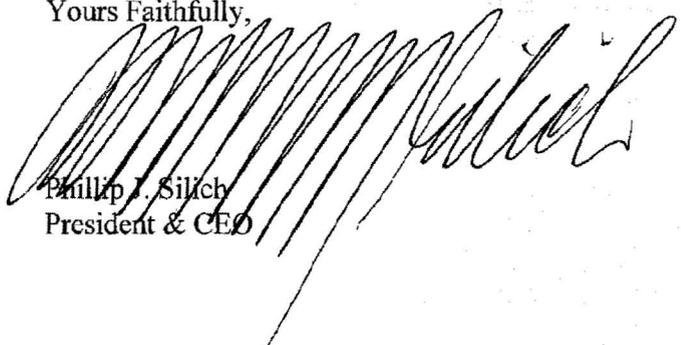
d. The original Damon leases, which HRPT purchased, do not contain any provisions for an annual escalating factor but simply provide for a resetting of rates each 10 years with the further clause that the rate be "fair and reasonable." It is our contention that "fair and reasonable" be determined as a two way street whereby both Lessees and Lessors negotiate in good faith.

e. Another diabolical negotiating factor with HRPT, which was never ever used by the Damon Trust, is that to-date tenants entering into a renegotiation with HRPT are forced to sign a confidentiality agreement. Thus in all negotiations with the tenants HRPT has full knowledge of all rental rates, whereas the individual tenants are presently being extorted one by one. How can be it be a "fair and reasonable" rate when one powerful mainland based entity, holding all the cards, is extorting individual small and sole business owners into paying approximately 50% more than comparable market rates.

On behalf of Bacon Universal and my fellow lessees I now appeal to you for passage of Senate Bill 764, House Bill 1593 Re Real Property. It is in no way intended to solely advance the Hawaiian lessees cause but to allow us to be given a fair opportunity of being able to negotiate a "fair and reasonable" rent as dictated by the lease agreement. Without the concept of "fair and reasonable" rents being applied to both sides, which is the purpose of this bill, then the tenants will be seriously disadvantaged and potentially forced out of business.

Again, please let me reiterate, this bill seeks to set parameters that "fair and reasonable" rents should be applicable to both parties of the lease. For the above reasons may I now petition you and your colleagues for your support and to ultimately pass this bill.

Yours Faithfully,



Phillip J. Silich  
President & CEO



# SERVCO PACIFIC INC.

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February 18, 2009

To: The Honorable Angus L. K. McKelvey, Chair  
and Committee Members  
Committee on Economic Revitalization, Business, & Military Affairs

From: Carol K. Lam  
Senior Vice President  
Servco Pacific Inc.  
2850 Pukoloa Street, Suite 300  
Honolulu, Hawaii 96819

Hearing Date: Thursday, February 19, 2009, 9:30 a.m.

In Support of HB 1593, Relating To Real Property

On behalf of Servco Pacific Inc. ("*Servco*"), I submit the following comments in support of the adoption of HB 1593 (the "*Bill*").

This bill affects businesses and lessees in the Mapunapuna, Sand Island, and Kalihi Kai areas who are trying to negotiate with landowner, HRPT, a Boston-based real estate investment firm. Servco is a third generation local company that has long-term commercial and industrial ground leases with HRPT in Mapunapuna. Our ground leases specifically provide that "said rent shall be such fair and reasonable annual rent for the demised land". We and other similarly affected lessees are asking that you support us by adopting this bill which calls for our ground lease rents to be negotiated on terms that are "fair and reasonable" to BOTH the landowner and lessees. HRPT is demanding rents that are double or triple what their lessees are now paying. They are also requiring a rent escalator of 3% to 4% that compounds annually. These rent offers are not "fair and reasonable" and our local companies simply cannot afford these rents.

This bill will not cost the State anything. But without it, the State may lose additional revenues if companies are forced to shut down and more jobs are lost due to exorbitant ground lease rents that are not fair and reasonable given the difficult economy and challenges that we face today. With your support of this bill, you will be supporting our local companies, their workers, and the customers we serve throughout the State.

We thank you for the opportunity to share our comments with you.

February 19, 2009

Representative Angus L.K. McKelvey, Chair  
Representative Isaac W. Choy, Vice-Chair  
House Committee on Economic Revitalization, Business, & Military Affairs  
State Capitol  
Honolulu, Hawaii 96813

Re: HB 1593 Re Real Property  
Hearing Date: February 19, 2009, 9:30am, Room#312

Dear Representative McKelvey and Choy and Members of the Committee:

My name is Jason Ideta. I vote in the Kaneohe District and I am a lessee in the Mapunapuna area. My company is a small locally owned wholesale business that distributes auto parts directly to mechanics and other auto parts distributors on Oahu and the outer islands. We own an 18,000 square foot warehouse on 35,000 square foot property with a ground lease originally from Damon Estate. We have 40 full-time and 2 part-time employees who have worked very hard to build the business over the last 23 years.

I am submitting my testimony in support of this bill due to the unfair business practices of my current landlord, HRPT. My lease calls for a "fair and reasonable" rate, but HRPT has been asking for anything but that. Market conditions have shown that they are asking for rates and annual increases that are way above current market levels. They are asking for rents that are more than double of what we are paying today, plus annual increases in a downward economy.

In these economic times, the last thing we need is to have an east coast investment company trying to cover their bad investments on the mainland by unfairly raising rents and putting a bunch of small local companies out of business. Being centrally located is very important in providing timely delivery to our customers which makes moving to leeward Oahu unfeasible. If our rents double, we will be forced to increase prices and cut costs by decreasing our work force to stay in business. Our customers will then pass on the increased costs to their customers. The cost to maintain and repair vehicles in Hawaii will increase. Most local businesses cannot raise prices and decrease service at the same time and remain competitive.

My company's employees and I support this bill because it will help our local economy stay afloat by supporting small businesses in the Mapunapuna Industrial area. This bill will provide an avenue for the lessor and lessee to live up to the spirit of the contract's "fair and reasonable" terms.

Thank you for your time.

Sincerely,

Jason Ideta  
Pacific Jobbers Warehouse, Inc.



2849 Kaihikapu Street • Honolulu, Hawaii 96819

Phone (808) 839-2771 • Fax (808) 833-3536

February 13, 2009

Rep. Angus McKelvey, Chair  
Rep. Isaac W. Choy, Vice-Chair  
House Committee on Economic Revitalization, Business & Military Affairs  
State Capitol  
Honolulu, HI 96813

Re: HB 1593 Re Real Property  
Hearing Date: February 19, 2009, 9:30 a.m. Conference Room 312

Dear Senators McKelvey, Choy and Members of the Committee:

My names is James Yamada, Jr., and I am a lessee in Mapunapuna under an original lease with Damon Estate dated 1971.

I own and operate the electrical contracting firm A-1 A-Lectrician, which my father James Yamada, Sr. built from the ground up in 1979. We have now grown to become one of the largest electrical contracting firms in the state, with nearly 150 office employees and electricians. I built and own my 5,000 square foot office space, and will be adding on a 2,000 square foot office extension, with building to commence in April 2009. Currently, we have a mortgage with First Hawaiian Bank with a balance due to date of \$150,000.00.

My lease is scheduled for rent renegotiations in 2012 with HRPT. With the economy in such a dismal position, I am very concerned about the potential rent increases set to take place in 2012.

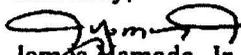
Last year, due to unforeseen economic circumstances, we were forced to lay off 60 to 70 of our employees, including one employee who has been with our company since 1990. Without a determination of what exactly "fair and reasonable" means, we could see our rent nearly double, which could effectively force us to again make cuts to our workforce and/or cuts to pay.

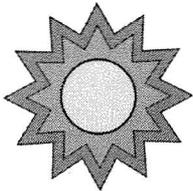
Due to the harsh economy, other electrical contracting firms have lowered their labor costs to remain competitive. If rent costs are raised, we would be forced to increase our labor costs, which would threaten our chances of being awarded job contracts, and thus we would again be forced to make cuts to our workforce.

This Bill provides that the rent increase shall be "fair and reasonable" to both lessor and lessee and that the determination of the increase will depend on actual factors affecting or relating to my property. Fair and reasonable rent will allow me to continue to operate my business, remain competitive in the industry and keep my employees working.

With utmost regard for the sake of our employees and their families, I ask that you pass this Bill.

Sincerely,

  
James Yamada, Jr.  
CEO



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COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS, & MILITARY AFFAIRS

Rep. Angus L.K. McKelvey, Chair

Rep. Isaac W. Choy, Vice Chair

Thursday, February 19, 2009

9:30 AM

Conference Room 312

In SUPPORT of HB 1593 Re Real Property

Chair McKelvey, Vice Chair Choy and Members of the Committee:

My name is Cully Judd, I have owned and operated Inter-Island Solar Supply since 1975. We are a renewable energy wholesale distribution company contributing to the growing green collar industry in Hawaii. We have been at our Oahu branch location, 761 Ahua Street, for nearly ten years and would like to stay. Although we have four years till rent renegotiations, the veil of secrecy created by HRPT's non-disclosure agreements and overly aggressive rent increase suggestions have resulted in our decision to join the efforts of Citizens for Fair Valuation to ensure businesses like ourselves continue to have a home in the industrial area of Mapunapuna.

I ask for your support of House Bill 1593 as well as Senate Bill 764 which simply seek to establish the application of "Fair and Reasonable" to both the lessor and the lessee through transparent negotiations.

Mahalo for your consideration,

Lawrence McCully Judd

# CITIZENS FOR FAIR VALUATION

841 Bishop Street, Suite 1500  
Honolulu, HI 96813

ROBERT M. CREPS, PRESIDENT  
CAROL LAM, VICE PRESIDENT  
CONNIE SMALES, SECRETARY  
PHILLIP J. SILICH, TREASURER

CULLY JUDD, DIRECTOR  
KEALI' I LOPEZ, DIRECTOR  
GUS COSSETTE, DIRECTOR  
MICHAEL STEINER, EXEC. DIRECTOR

February 17, 2009

## VIA Email and Paper

Representative Angus L.K. McKelvey, Chair  
Representative Isaac W. Choy, Vice-Chair  
House Committee on Economic Revitalization, Business, & Military Affairs  
State Capitol  
Honolulu, Hawaii 96813

**Re: HB 1593 Re: Real Property – Testimony in Support**  
**Hearing Date: February 19, 2009, 9:30 a.m., Room #312**

Dear Representatives McKelvey and Choy and Members of the Committee:

My name is Michael Steiner and I am the Executive Director of Citizens for Fair Valuation ("CFV"), a non-profit coalition of businesses with long-term ground leases in the Mapunapuna, Kalihi Kai and Sand Island areas. These are the old Damon Estate lands which were purchased by HRPT; a mainland based Real Estate Investment Trust (REIT). These ground leases, which typically last for 50 years, call for the renegotiation of rents that are "fair and reasonable," every 10 years.

## **Rent Increases**

House Bill 1593 seeks to establish that "Fair and Reasonable" rents should be applicable to both the lessor and the lessee. Unlike other ground leases in Hawaii which call for rent to be calculated upon land value at a certain rate of return, the HRPT leases call for "fair and reasonable" rents. CFV supports this Bill as it seeks to set parameters that encourage open and transparent negotiations resulting in ground lease rental rates that are "fair and reasonable" to both parties and would not simply favor HRPT, who is now the largest industrial and commercial landowner in the State.

To be "fair and reasonable," rents should take into account the original agreed upon use and stewardship of the land. It is not "fair and reasonable" to increase rents based upon a single fee simple sale of land in the middle of captive space. At a minimum, to be "fair and reasonable" HRPT needs to take into consideration the agreed upon use of the land under lease, other newly signed ground leases for similar properties, the rates currently in force for neighboring properties, the general condition of the neighborhood, and the overall condition of the economy.

During the Damon years, Damon recognized that adverse economic times affected its lessees' ability to pay rent. They lowered rents during the hard times of the 1990's and negotiated in an open and transparent manner working to insure the long-term success of their tenants in order to keep people employed and their land generating revenue. At present, the new owner, HRPT, is seeking to increase rents from roughly \$4.00 per foot per year to between \$8.00 and \$10.00 per sq foot. In addition, HRPT is requiring annual increases of between 3.5% and 4.5%.

**Testimony in Support of HB 1593,**

To illustrate the magnitude of this increase, we need to first look at what a typical lessee is currently paying for just over one acre (45,000 square feet) of space. Assuming a flat rent of \$4.00 per square foot per year, the following chart reflects the monthly, annual and 10 year payments:

	Monthly		Annual	
	Rate	Amount	Rate	Amount
Each Year	0.33	15,000	4.00	180,000
10 yr Total			4.00	1,800,000

HRPT, per its published statements, is now demanding rents of between \$8.00 and \$10.00 per square foot **plus** annual increases of 3.5% to 4.5%. Assuming the same 45,000 square foot lot, the following chart illustrates the cost of rent at \$8.00 with a 4% annual increase or step-up:

	Monthly		Annual	
	Rate	Amount	Rate	Amount
Year 1	0.67	30,000	8.00	360,000
Year 2	0.69	31,200	8.32	374,400
Year 3	0.72	32,448	8.65	389,376
Year 4	0.75	33,746	9.00	404,951
Year 5	0.78	35,096	9.36	421,149
Year 6	0.81	36,500	9.73	437,995
Year 7	0.84	37,960	10.12	455,515
Year 8	0.88	39,478	10.53	473,735
Year 9	0.91	41,057	10.95	492,685
Year 10	0.95	42,699	11.39	512,392
10 Year Average	0.80	36,018	9.60	432,220
10 Year Total				4,322,199

Within this example, the lessee’s rent will increase from \$180,000 per year to an average of \$432,220 per year with a final year’s rent at \$11.39 per square foot and a total cost of operation during the 10 year period of \$4,322,199. When compared to the 10 year operating cost of \$1,800,000, this equates to an increase of slightly more than a 140% over current levels.

10 Year Stats	
Total 10 Year Payments w/Step up Rent	4,322,199
Total 10 Year at Current Fixed \$4 level	1,800,000
Additional Rent Paid Over Fixed	2,522,199
Percent Increase of Total Paid Rent	140.12%

**HRPT’s Stated Objective**

Based upon the examples shown, it is clear that HRPT’s desire is to use their Hawaiian lands to the benefit of their corporate investors and not the local business owners who work the land. This message was emphasized during HRPT’s 2<sup>nd</sup> Quarter Earnings Call on August 5, 2008. When asked how Hawaii rents will impact HRPT’s profit, Adam D. Portnoy, Managing Director of HRPT, speaking on behalf of HRPT said:

**Testimony in Support of HB 1593.**

"We are pushing rates very hard especially in places like Hawaii. If you want to Google us and look at some of the articles written about us in Hawaii press, we've gotten a lot of flack in that market because we're pushing rates so hard and trying to push the rates so hard. In fact, there's been a little bit of backlash from a lot of the tenants. So rest assured that we're doing everything we can, as much as we can and as fast as we can to try to increase the rates there to push cash flow to HRPT."

HRPT appears to be looking to Hawaii to cure its cash needs without regard to our local businesses' ability to keep their employees working and business operating. In spite of area rentals being shown in the low \$6.00 range with existing buildings (Jackson Auto on Nimitz Hwy), Portnoy reaffirmed that "... you're going to see over the next 18-24 months [HRPT] continue to try to push rates as much as we can."

**Contract Language**

Many contracts include definitions to assist the parties in performing their obligations under a contract; however, the former Damon Estate leases that contain the "fair and reasonable" provision do not.

CFV lessees are now dealing with a Massachusetts based, publicly-traded REIT that announced to its stakeholders that they will pull cash from Hawaii by "pushing rates" and bring that cash back to their mainland offices. CFV members report that there has been very little effort from HRPT to "negotiate" or establish a "fair and reasonable" rent as is specified by the express language of their leases. In fact, HRPT is requiring its tenants to sign confidentially agreements before negotiations even begin – something Damon Estates never required.

The pending bills would establish parameters to ensure that rent adjustments under these particular leases be fair to both the lessor and the lessees. The bill does not add any new terms or delete existing terms from the lease or change any words in the lease.

**Not a Private Dispute**

The situation with these leases is not a private dispute between a group of lessees and one lessor, which assumes incorrectly that the lessees have equal bargaining power. HRPT is a monopolistic owner and, especially in light of the current recession in Hawaii where every day brings news of more lay-offs and downsizing, tenants need the assistance of the legislative body to set parameters in which ground lease rents are negotiated in an open and transparent manner to provide "fair and reasonable" rents.

The issue here is the continued economic viability of the Mapunapuna/Kalihi Kai/Sand Island industrial properties, the businesses that are located there and the continued employment of hundreds, if not, thousands, of employees who work there. Moreover, this bill addresses a state-wide concern as the lessees in the Mapunapuna area provide goods and services across the entire State of Hawaii. Among the lessees businesses are Grace Pacific, Servco, Sony, Coca Cola, Ameron, Olelo Television, Bacon Universal and Inter-Island Solar Supply, all of which have multi-island responsibilities. In addition, there are numerous electrical and plumbing supply houses that service contractors all over the state, general and sub-contractors who have jobs throughout the state and many others who provide goods and services to consumers and businesses on every island within the State.

Accordingly, significant increases in operating expenses will clearly impact the economy of the State of Hawaii. What happens to the Mapunapuna lessees is or should be a state-wide concern for legislators in this economy. This Bill recognizes that landlords and tenants, owners and lessees, need to come together to negotiate, in an open and transparent manner, to achieve rents that are "fair and reasonable" to all parties in order to preserve the businesses that provide for our way of life.

### **Negotiating under Duress**

Even though these businesses provide services throughout the state, they are forced to negotiate with a single owner. To state the obvious, ground leases are for just the ground. It is the lessees' responsibility to construct and maintain their buildings, which will revert to the land owner at the end of lease. In addition to the good-will built up over years of occupying the same location, the lessees' buildings represent a huge investment. Moving to another location is not realistic due to the high level of investment as well as the potential moving costs, loss of customers and employees and the fact that there may be 20 or more years left on the original ground lease.

Without parameters to ensure that "fair and reasonable" rents will apply to both parties, the mainland owner can use its power to its advantage and demand rents that are not fairly negotiated.

### **Course of Conduct**

Most ground leases in the Mapunapuna area have a term of 50 years. As mentioned, Damon would work with its tenants during tough times to ensure the viability of the businesses and protect its long-term relationship. Lessees have relied upon this conduct for the past 30 years.

With the sale of the property to the mainland-based HRPT, the old ways have been discarded. Instead of "fair and reasonable" negotiations, HRPT is demanding confidentiality agreements be signed before meaningful discussions can take place. No longer can neighbors meet to "talk story" without the fear of repercussion or law suit. Instead of level rents for each new segment of the leases, HRPT is only offering rents with annual increases that range between 3% and 4.5%. In addition, HRPT is requiring the lessees to grant HRPT a right of first refusal to the lease in all re-openings.

These changes are not consistent with the course of conduct that was established over the years with Damon Estate. These changes are material and go beyond what would be considered "fair and reasonable" to both parties. It is only reasonable to the land owner.

### **Existing Remedies Do Not Work**

Should the owner and lessee fail to reach agreement, the lease requires the parties to enter arbitration. However, arbitration is not a viable method to determine the rent valuation.

Because the lessor has required the lessee to sign confidentiality agreements in advance of negotiations, and that agreement prohibits the lessee from disclosing any terms offered, the lessor has made it impossible for the lessees to obtain a determination of what is "fair and reasonable" and to learn about the results of any other lessees' negotiations. Of course, the lessor is working with "inside information" as it has data for all current rents, pending negotiations, signed leases, and mediated or arbitrated outcomes.

Arbitration is a lengthy and costly process that puts an extreme burden on the lessee. In these hard times, business owners are working frantically to salvage their existence and keep their employees employed. It is not within their projections to be forced to spend thousands of dollars to fight with the lessor – who truly should be a business associate and not an adversary. Furthermore, an arbitration, which may take weeks and weeks to complete, will deprive the business owner of the opportunity to watch over the day-to-day operations, which could lead to failure in these quick moving and unexplainable economic times.

Finally, while the pool of appraisers in Hawaii is limited, the potential number of arbitrations will rise dramatically if HRPT continues its announced course of "pushing rents" as high as possible. As such, there

**Testimony in Support of HB 1593,**

is a real possibility that local appraisers will court HRPT as a steady and lucrative source of business. Will this sway the process to the land owner's benefit? Will the individual lessee, who has no access to "fair and reasonable" data, be at a disadvantage?

**Citizens for Fair Valuation**

Citizens for Fair Valuation ("CFV") is a non-profit coalition of businesses that lease land from HRPT in and around the Mapunapuna area. CFV's members meet every other week to discuss how best to approach the owner, HRPT, to obtain rents that are "fair and reasonable" to both parties. To-date, CFV has sent seven (7) separate invitations to HRPT offering to meet to discuss how we can mutually obtain "fair and reasonable" rents for everyone concerned; however, each offer was rejected by HRPT. Furthermore, HRPT has done everything possible to disenfranchise Citizens for Fair Valuation as an organization and has taken aggressive steps to "divide and conquer" its tenants and keep them under a veil of secrecy.

HRPT is an extremely large Real Estate Investment Trust (REIT) that must return at least 90% of its profits to its Stakeholders in order to maintain its preferred tax status. Most of its holdings are commercial high-rise office buildings located on the mainland and not long-term ground leases in Hawaii. HRPT is not accustomed to doing business here and, in the opinion of the writer, cares little for the "Aloha" that comes with the responsibility of owning Hawaiian land.

**Conclusion**

As a final comment in support of this legislation, the lessees with HRPT leases are hard working business people who would rather conduct their business, which is getting harder to do each day, than campaign for new legislation. They do not object to paying rent that is fairly negotiated and determined by applicable economic and market factors including, but not limited to, applicable comparables, the current use of the property and the characteristics of neighborhood (i.e. daily flooding, poor streets, stream flooding, crime, construction, etc). They do, however, strongly object to a lessor who uses "take-it-or leave-it" tactics while insisting upon rents that range from \$8.00 to \$10.00 per sq. ft., with annual increases set between 3.5% and 4.5 %. As a comparison, the Jackson Auto dealership on Nimitz Highway, is listed at \$6.24 per sq. ft. for the land and improvements (buildings) and does not have the infrastructure problems that the Mapunapuna lessees have to live with on a daily basis.

In these hard times, small businesses need assistance. The state simply cannot afford to see more closures and the loss of employment. In particular, the businesses in the Mapunapuna, Kalihi Kai and Sand Island area represent a foundation upon which these islands were built. These are proud people who are not looking for a bail-out; they just want the comfort of knowing that both parties in these lease renegotiations will act in an open and transparent manner that will produce "fair and reasonable" rents for all concerned.

Thank you.



Michael Steiner

Executive Director

Citizens for Fair Valuation

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Web Site: [www.FairValuation.org](http://www.FairValuation.org)

Video at: <http://www.fairvaluation.org/video.aspx?video=cfv.wmv>

Addendum to Testimony from Michael Steiner

In Support of HB 1593

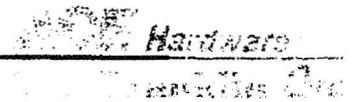
Hearing Date: February 19, 2009, 9:30 a.m., Room # 312

Partial List of Lessees in the Mapunapuna/Kalihi-Kai/Sand Island Area

	Company
1	179 Sand Island Warehouse, LLC
2	Affordable Casket Outlet
3	A S N Enterprises
4	A-1-A Electricians
5	Ahua Enterprises
6	Al Castillo
7	Albert Young
8	Allied Building Products Corp.
9	All Nations Fellowship
10	Allwaste of Hawaii LTD
11	Aloha Auto Auction
12	Aloha Products
13	American Electrical Co., LLC
14	American Savings Bank
15	American Tire (Hawaiian Island Tire)
16	Ameron Hawaii
17	Anches, Jerome
18	Associated Construction
19	AT&T Wireless
20	Bacon - Universal Company, Inc.
21	Bank of Hawaii
22	Ben Franklin
23	Beth Israel Jewish Ministries Int'l
24	Big Rock
25	Blackburn & Associates
26	BOC Group, Inc.
27	Boise Cascade Corp
28	Bond, Jan Tr
29	Boulware, Michael H
30	C & F Machinery Corp
31	Carmen, Wade & Paula
32	Chevron USA Inc
33	Coca-Cola
34	Concrete Coring Co of Hawaii
35	Cossette Investments
36	Deer, Donald G 1989 REV TR/ETAL
37	Dennis Sullivan
38	Dimauro, Pender, leona
39	Diversified Energy Services
40	First Hawaiian Bank
41	Foster Equipment Co., Ltd.
42	Gentre Properties
43	Grace Pacific Corporation
44	Grapac Properties
45	Gray, James, TRS
46	GSH&K Investment
47	H Q INC
48	Hart, Doris J TR
49	Hawaii Concrete Product, Inc
50	Hawaii Nut & Bolt, Inc

	Company
51	Hawaii Stage & Lighting
52	Hawaiian Bitumuls Paving
53	HIE Holdings Inc
54	Hirahara, Ronald Y TR
55	Honolulu Disposal Service
56	Honolulu Painting Co
57	Honolulu Warehouse Co Ltd
58	Horizon Waste Services
59	HSI Electric, Inc.
60	Hydro-Scape Irrigation Supply
61	I DOI Hauling Contr, Inc.
62	Intech, Inc.
63	Inter-Island Solar Supply
64	Island Lighting
65	Ito-En (USA) Inc.
66	Jack Endo Electric
67	John Wagner Assoc Inc
68	Kahai St Dev Partnership
69	Kaiser Foundations Helath Plan
70	Kaya, Darlynn
71	Ken Yee
72	Ken's Auto Fender Ltd
73	Kilgo, A TR
74	Killebrew, George III Fam Tr
75	Kimi, William J Jr.
76	Kobatake, Gilbert D. Tr
77	Komohana Corp
78	Langer Hawaii Corp
79	Leeward Auto Wreckers Inc
80	Luria, Mark T.
81	M.C. Auto Body& Paint
82	Marcus & Associates Inc.
83	McKillican American
84	MHI LLC
85	Mid Pac Petroleum, LLC
86	Moanalua Exchange Ltd
87	Moanalua Mortuary
88	Monier Inc
89	Moos Machine Works, Inc
90	Mr. Sandman Inc.
91	MW Group Ltd.
92	Nakasone, Lillian KG
93	Nordic Construction Ltd
94	Oahu Metal & Supply Inc.
95	Okuhara Foods Inc
96	Olelo Community Television
97	Pacific Allied Products Ltd
98	Pacific Jobbers Warehouse
99	Pacific Machinery
100	Pflueger Group LLC

	Company
101	Philip Services Hawaii Ltd
102	Pioneer Electric Inc
103	Plywood Hawaii, Inc.
104	Pohounui Partners LLC
105	Polynesian Adventure Tours
106	Prime Construction Inc.
107	R & H Machinery Inc.
108	R WO & Associates Inc.
109	Ralph S. Inouye Co., Ltd.
110	Rasko Supply
111	Refuse Inc
112	Renfro, Charles & Carol S
113	Royal Construction Co. Ltd
114	RSI Roofing & Building Supply
115	S I Center Partners
116	Sawdust
117	Sears Roebuck & Co
118	Servco Pacific, Inc.
119	SLSS Partners
120	Snyder, Family Tr
121	Sony Electronics, Inc.
122	Specialty Surfacing Co.
123	STI Industries
124	Stoneridge Recoveries LLC
125	Sugai, Rodney Y Trust
126	Sin Industries Inc.
127	Sylvia, Robert C. Tr
128	Tagupa, James Tr
129	Takane, Janlu M
130	Takiguchi, Raymond K Tr
131	Tesoro Hawaii Corporation
132	Time Warner Entertainment
133	Tokunaga Masonry
134	Tri-Palm Industries Inc.
135	Tropical Ethanol Prod Ltd
136	Twentieth Century Furn Inc.
137	United Truck Rentals
138	UTR Liquidation * Repos Inc
139	Value Service & Supply
140	W T Yoshimoto Corp
141	Walker-Moody Construction
142	Wallner, Family Trust
143	Warehouse Rentals Inc.
144	WASA Electrical Service
145	Webco Hawaii, Inc.
146	Weggeland, Francis M
147	WESCO Distribution Inc.
148	White Cap Construction Supplu
149	Won, Philip W.
150	World Carpets Inc



February 15, 2009

Rep. Angus McKelvey, Chair  
 Rep. Issac W. Choy, Vice-Chair  
House Committee on Economic Revitalization,  
Business & Military Affairs  
 State Capitol  
 Honolulu Hawaii 96813

RE: House Bill 1593 Relating to Real Property  
Hearing Date: February 19, 2009, 8:30 am, Room 312 9:30 AM

Dear Representative McKelvey, Representative Choy and Members of Committee,

My name is Guy Kamitaki and I am one of the family members that own and operate the Ben Franklin Crafts Store at 2810 Paa St. in Mapunapuna. We employ over 50 people at this location.

We would like to urge you to pass <sup>HB 1593</sup> ~~Senate Bill 764~~ – Relating to Real Estate. Our ground lease with our current landlord, LTMAC Properties, LLC a mainland based REIT came up for renewal on 1/1/09.

As our ground lease states, we would like our ground lease negotiations to be “fair and reasonable” to allow us to continue doing business in this location. We do not consider doubling or tripling our ground lease payments to be “fair and reasonable.” We have been in this location for over 16 years and we have been operating stores in Hawaii for over 50 years.

We are currently having a difficult time leasing out some of the space in the building. We have about 8,000 square feet of retail and office space currently vacant.

We urge you to pass this legislation to better define the “fair and reasonable” clause in our lease and allow us to continue operating our store in the Mapunapuna area. Thank you for your consideration.

Aloha,

A handwritten signature in black ink that reads 'Guy Kamitaki'.

Guy Kamitaki

BFS, Inc. dba Ben Franklin Crafts • Ace Hardware Hawaii, Inc. dba Ace Hardware  
 2810 Paa Street Bldg A • Honolulu, Hawaii 96819 • Phone: (808) 838-7773 • Fax: (808) 838-7776