



SERVCO PACIFIC INC.

2850 Pukoloa Street • Suite 300 • Honolulu, Hawaii 96819 • Telephone: (808) 584-1300 • Facsimile: (808) 523-3937 • www.servco.com

February 25, 2009

To: The Honorable Jon Riki Karamatsu, Chair
and Committee Members
Committee on Judiciary

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

Hearing Date: Thursday, February 26, 2009, 2:15 p.m.

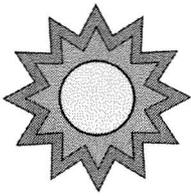
In Support of HB 1593, Relating To Real Property

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.



INTER-ISLAND SOLAR SUPPLY

Serving Hawaii and the Pacific Islands Since 1975

761 AHUA STREET, HONOLULU, HAWAII 96819 Tel: (808)523-0711 Fax: (808)536-5586

February 25, 2009

Committee on Judiciary

February 26, 2009

2:15 pm

Conference Room 325

In SUPPORT of HB 1593 Re Real Property

Chair Karamatsu, Vice Chair Ito 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" rent to both the lessor and the lessee through transparent negotiations.

Mahalo for your consideration,

Lawrence McCully Judd



2849 Kaihikapu Street • Honolulu, Hawaii 96819

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

February 25, 2009

Committee on Judiciary
Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice Chair

Re: HB 1593 Relating to Real Property
Date: February 26, 2009
Time: 2:15 pm
Place: Conference Room 325

Aloha Chair, Vice Chair 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.

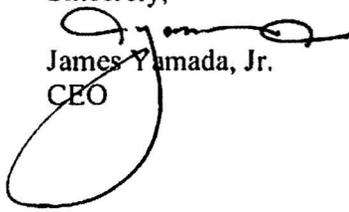
Last year, due to unforeseen economic circumstances, we were forced to lay off 60 to 70 of our employees, including one employee who has been with our company since 1990. Without a determination of what exactly "fair and reasonable" means, we could see our rent nearly double, which could effectively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

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY
THURSDAY, FEBRUARY 26, 2009, AT 2:15 P.M.
ROOM 325, STATE CAPITOL**

RE: H.B. 1593, Relating to Real Property

Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

My name is Brad Leach, Vice President-Pacific Region, for Reit Management & Research LLC, the property manager for HRPT Properties Trust ("HRPT"). Through its affiliated companies, HRPT owns industrial zoned land in Mapunapuna, Sand Island, and Ewa, and leases many of its Hawaii properties pursuant to long-term leases.

HRPT respectfully, but strongly, opposes H.B. No. 1593 ("the Bill"). This Bill is unprecedented. The Bill is targeted at a single landowner—HRPT—and would effectively change the agreed upon terms of previously negotiated long-term commercial and industrial lease contracts, for the sole benefit of a small group of lessees. The proponents of this Bill include some of the largest companies in Hawaii, who have enjoyed substantially below-market lease rents for the last decade. In testimony before the State Senate on a companion bill, SB 764, this Bill's proponents candidly admitted that they are pushing the Bill to use as leverage in lease rent renegotiations with HRPT, to use it (in the words of a State Senator) as a "club" against HRPT. HRPT respectfully submits that is not an appropriate use of the legislative process. Moreover, the Bill is clearly unconstitutional under Hawaii law. HRPT urges the Bill be held in committee, for the following reasons:

1. There is no public need for this legislation— Since HRPT acquired the Mapunapuna properties in 2003, the type of rent re-set lease contract provisions targeted by the Bill have been triggered more than 50 times. HRPT and its tenants have successfully negotiated a mutually acceptable rent rate in more than 90 percent of these cases. When the lessor and lessee cannot agree, the existing lease contracts and existing law in Hawaii establish a procedure whereby the land's fair market value and resulting lease rent are determined by neutral, qualified appraisers. This fair market value appraisal procedure for determining commercial and industrial lease rent rates has been followed here in Hawaii for many decades on all such leases. A 2003 State of Hawaii Legislative Reference Bureau study entitled "Real Property Leases" found that commercial and industrial lease rents are "probably right where they should be," and concluded:

"While it is clear that certain lessees are experiencing significant difficulty under their present leases, there is no indication at this time of a broad based compelling need for the Legislature to pass legislation to mandate the alteration of existing lease agreements." Since then, there has been no new study or research of industrial or commercial lease rents that justifies legislation contradicting the clear conclusions of the 2003 LRB study, and certainly no study that justifies legislation directed at a single landowner such as HRPT.

In those few cases where the tenant and HRPT have not reached an agreement on new lease rent, HRPT has never declined a tenant's request for mediation which avoids the time and expense of arbitration otherwise required by the lease. HRPT also has entered into dozens of new leases. Demand has remained strong for HRPT's properties, and HRPT has tried to balance that demand with the needs of its existing tenants. In several cases HRPT has worked diligently with tenants to reach creative lease solutions that reflect the current market conditions but also provide a better "fit" for the tenant's evolving business needs.

Many of the proponents of the Bill are tenants whose lease rent was last re-set in the 1990s, when property values were far lower than they are today. Research data from Colliers Monroe Friedlander shows that industrial warehouse rents on Oahu have doubled between 1998 and 2008. Colliers' data also shows that estimated industrial land values in the Mapunapuna/Sand Island/Kalihi Kai area have doubled during the same period. Tenants who have had the benefit of a low, fixed rental rate for the last ten years will now have their rent re-set to reflect those increased values and current market rates. However, HRPT views each lease on its unique facts and circumstances, and has always carefully considered any reasonable tenant proposal.

2. The Bill will not fulfill its stated purpose, and will not help "small businesses" or Hawaii's economy—Although the Bill purports to help "small businesses," its beneficiaries include some of the largest companies in the State. According to testimony submitted to the State Senate, the Bill's proponents include Servco Pacific Corp. and Grace Pacific Corp. Hawaii Business magazine lists Servco Pacific Corp. as the 13th largest business in Hawaii, and Grace Pacific Corp. as the 50th largest business. Furthermore, there is no evidence that targeting and penalizing one landowner, in one relatively small section of Oahu, will "stabilize Hawaii's economy," as the Bill claims. Finally, there is no evidence whatsoever that businesses in Mapunapuna are being "forced to relocate to rural areas and away from the urban

centers,” as the Bill alleges. Mapunapuna has always been and will remain a dynamic center for Oahu’s industrial and commercial businesses, both large and small. Since acquiring the Mapunapuna properties in 2003, HRPT has worked hard to resolve some of the area’s longstanding problems, including the tidal flooding that has plagued Mapunapuna for 25 years. This year, with HRPT’s intervention and the City’s assistance, the repeated tidal flooding will be stopped, for the benefit of Mapunapuna’s businesses and customers alike.

3. The Bill is unconstitutional— While the Bill’s proponents claim that this Bill merely “clarifies” HRPT’s leases with its tenants, in fact the Bill seeks to re-define an existing term in existing leases. By the admission of the Bill’s own proponents, in their testimony before the State Senate, the Bill seeks to change the lease rent redetermination process in existing leases for the sole benefit of lessees, to attempt to reduce their lease rent.

Three separate State Attorney General opinions—in 2000, 2001, and 2002—concluded that similar bills to rewrite the terms of commercial and industrial leases for the benefit of lessees were unconstitutional. As the 2002 Attorney General opinion stated: *"The bill does not appear to provide a reasonably and narrowly drawn means to accomplish a significant and legitimate public purpose."* Under the Contracts Clause of the Hawaii State Constitution, and a Hawaii Supreme Court case called Anthony v. Kualoa Ranch, Inc. 69 Haw. 112 (1987), a state law is invalid if it "operates as a substantial impairment of a contractual relationship." This Bill substantially impairs existing commercial and industrial lease contracts by regulating an area that was not previously subject to regulation; interferes with the expectations of the parties; and changes the agreed upon terms of affected lease contracts.

Furthermore, the Hawaii Supreme Court made clear in Anthony that a law which changes existing contract rights and remedies is also unconstitutional if it does not impose a “generally applicable rule of conduct designed to advance broad societal interests”. This Bill does not advance any “broad societal interests”. Rather, the Bill seeks to benefit one small group of lessees, by attempting to reduce their renegotiated lease rents, to the detriment of one landowner, without any rational relation to the public purpose stated in the Bill. Such a Bill violates the Contracts Clause of both the Hawaii and U.S. Constitutions. See Anthony, 69 Haw. at 124 (finding a statute that attempts to change lease remedies and obligations “simply for the purpose of doing equity, as the legislature saw it” is unconstitutional).

This Bill is bad policy, and bad for business throughout the State of Hawaii. The Bill sets a terrible precedent, sending a message to all businesses that they cannot necessarily rely on enforcing mutually agreed contract terms in this State. I ask that the Committee hold this Bill, and I thank the Committee for the opportunity to express our opposition.

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 25, 2009

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY
THURSDAY, FEBRUARY 26, 2009, AT 2:15 P.M.
ROOM 325, HAWAII STATE CAPITOL**

RE: HB 1593 – Relating to Real Property – Testimony in Support

Aloha Chair Karamatsu, Vice Chair Ito, 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. A partial list of lessees is attached to this testimony. These are the old Damon Estate lands which were purchased in 2003 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.

Need for Legislation to Protect Local Businesses

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 will 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.

A landlord and tenant need to work together to provide stability and ensure that both parties benefit from the relationship. However, when asked how Hawaii rents will impact HRPT's profit, Adam D. Portnoy, Managing Director of HRPT, said during HRPT's 2nd Quarter Earnings Call on August 5, 2008:

"We are pushing rates very hard especially in places like Hawaii ... we've gotten a lot of flack in that market because we're pushing rates so hard ... 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."

To accomplish this goal, HRPT is demanding base rents that are double or triple existing rates plus a 3.5% to 4.5% annual escalation. In addition, HRPT is requiring its lessees to sign confidentiality agreements **before** negotiations will commence – which is something the Damon Estate never required.

CFV is requesting that the State pass HB 1593 to provide the public a foundation upon which open and transparent negotiations will lead to rents that are "fair and reasonable" to both sides.

Testimony in Support of HB 1593.

Not a Private Dispute

The situation with these leases is not a private dispute between a group of lessees and one lessor. 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 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 the 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 small and medium-sized companies that include 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 and 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.

HRPT Violating 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.

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. As such, the Hawaii Supreme Court case of Anthony v. Kualoa Ranch, Inc. 69 Haw. 112 (1987), is not applicable as HB 1593 does not seek to "operate as a substantial impairment of a contractual relationship." HB 1593 is written such that it supports the 2002 Attorney General's opinion that a Bill should "provide a reasonable and narrowly drawn means to accomplish a significant and legitimate public purpose."

The Damon leases call for a rent renegotiation every 10 years and that, "said rent shall be such fair and reasonable annual rent for the demised land (exclusive of buildings)" for that period. It is HRPT that is changing the contract language by insisting that renewals include annual escalations, confidentiality agreements, a right of first refusal and more... In this time of economic uncertainty, this is not in the public's best interest as these steep rental increases will result in higher consumer costs, more unemployment, possible business failures and ultimately, a lowering of revenue for the State of Hawaii.

HRPT Intimidation 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.

Testimony in Support of HB 1593,

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 and mediation rather than simple open and transparent negotiation. No longer can neighbors meet to “talk story” without the fear of repercussion or law suit. Instead of setting a level rate for each new segment of the lease, HRPT is only offering rents with annual increases that range between 3.5% 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. They serve only to benefit the land owner and to reaffirm Portnoy’s statement, “... you’re going to see over the next 18-24 months [HRPT] continue to try to push rates as much as we can.”

Negotiating under Duress

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 goodwill built up over years of occupying the same location, the lessees’ buildings represent a huge investment. Moving to another location is not an option as the lessee is bound to pay rent to the lessor whether they occupy the land or not. Without parameters to ensure that “fair and reasonable” rents will apply to both parties, the mainland owner can use its power to its advantage to create and demand rents that are not fairly negotiated. In essence, they are using their monopolistic power to economically evict tenants.

Arbitration Does 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 lessees from disclosing any terms offered or accepted, HRPT has made it impossible for the lessees to obtain meaningful information regarding the results of any other lessees’ negotiations – which could be argued to be the best comparable information. HRPT, on the other hand, is working with “inside information” as it has data for all current rents, pending negotiations, signed leases, and mediated or arbitrated outcomes.

HRPT holdings include more than 150 ground leases. With HRPT’s announced course of “pushing rents” as high as possible, the number of arbitrations will increase. Unfortunately, Hawaii’s pool of qualified appraisers is small and many may look to HRPT as a steady and lucrative source of business. The potential to sway the process to the land owner’s benefit will increase and the individual lessee, who has no access to “fair and reasonable” data, be at a distinct disadvantage. HB 1593 will help set parameters to enable a fair and reasonable outcome to a negotiation, mediation and/or arbitration.

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 maintain their existence and keep their employees employed. It is not within their budget 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.

Failure to Respond to Community Needs

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. HRPT is not accustomed to

Testimony in Support of HB 1593,

doing business here and, in the opinion of the writer, cares little for the "Aloha" that comes with the responsibility of owning Hawaiian land.

HRPT has stated that it has spent \$750,000 studying the tidal flooding its Mapunapuna land and has given the state a recommendation to cure the problem – it has not offered to tackle the problem or pay for it even though HRPT will ultimately receive the largest benefit. In contrast, back in 1999 Damon paid \$6,000,000 to provide new sewers and cesspools to its lessees.

Citizens for Fair Valuation ("CFV"), a non-profit coalition of businesses that lease land from HRPT, 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 and to-date, each offer was rejected by HRPT. HRPT has done everything possible to intimidate its lessees and has taken aggressive steps to "divide and conquer" its tenants by forcing them to operate under a veil of secrecy.

Conclusion: Help Us Save Our Jobs

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. Hawaiian Homelands has two parcels in Shafter Flats for lease at \$5.36 but neither has attracted any takers other than the existing tenant.

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

Telephone: (808) 221-5955

Email: MSteiner@SteinerAssoc.com

Web Site: www.FairValuation.org

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

ESTATE OF SAMUEL MILLS DAMON

April 11, 1997

Dear Trustees:

Re: Options for Extension of Fixed Rental Period & Waiver of Deferred Rent
35,698 sq. ft., Mapunapuna Industrial Subdivision

In early 1993 the Trustees of the Damon Estate concluded rent negotiations with the lessees of Mapunapuna for the 10-year period commencing either 11/1/92 or 1/1/93. The rent was set at \$3.45 per square foot per annum at that time, with the option for incremental step-ups of \$2.45, \$3.45 and \$4.45 for 3, 3 and 4 year periods, respectively. In October of 1995, lessees were advised that the \$1.00 increase scheduled for either 11/1/95 or 1/1/96 would be deferred for a one year period due to a number of circumstances, including the drastic decline in demand for warehouse space, the lack of construction work and depressed economic conditions in general. In September of 1996, lessees were advised that the rent increases that were fully deferred a year earlier would be partially deferred for the next 2-year period and rent was set at \$2.95. As a result of the \$1.00 deferred for 1996 and the \$.50 deferred for 1997 and 1998, the total deferred obligation in the amount of \$2.00 has resulted in a substantial financial liability to our tenants.

The Trustees' ongoing evaluation of Hawaii's economic climate has resulted in their belief that the business interest of all concerned would be best served by an extension of the fixed rental period along with a waiver of the \$2.00 in deferred rent that you are currently obligated to pay. Doing so should reduce uncertainties with respect to your lease and make long range planning more meaningful. The value of your lease should also be enhanced by giving you the flexibility to more readily secure conventional mortgage financing for property improvements or other business requirements, as well as making your lease more marketable.

This offer is made available to certain Mapunapuna lessees who are not in default under the provisions of their lease at the present time. For those lessees who are currently in default, you will be given thirty (30) days to cure the default, or to submit a plan to cure the default that is acceptable to the Trustees.

The options being made available by the Trustees follow:

Option 1:

- 3 years @ \$2.95 per sq. ft. per annum (1/1/97 - 12/31/99)
- 3 years @ \$3.15 per sq. ft. per annum (1/1/00 - 12/31/02)
- Waiver of \$2.00 in deferred rent (1/1/96 - 12/31/98)

Option 2:

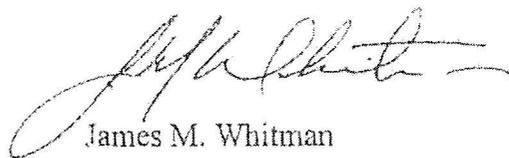
- 3 years @ \$2.95 per sq. ft. per annum (1/1/97 - 12/31/99)
- 3 years @ \$3.15 per sq. ft. per annum (1/1/00 - 12/31/02)
- 5 years @ \$3.45 per sq. ft. per annum (1/1/03 - 12/31/07)
- 5 years @ \$3.95 per sq. ft. per annum (1/1/08 - 12/31/12)
- Waiver of \$2.00 in deferred rent (1/1/96 - 12/31/98)

	<u>mo</u>	<u>Annual</u>
3 years @ \$2.95 per sq. ft. per annum (1/1/97 - 12/31/99)	\$ 2,775	105,309
3 years @ \$3.15 per sq. ft. per annum (1/1/00 - 12/31/02)	9,371	112,449
5 years @ \$3.45 per sq. ft. per annum (1/1/03 - 12/31/07)	10,263	123,158
5 years @ \$3.95 per sq. ft. per annum (1/1/08 - 12/31/12)	11,757	141,007

Kindly indicate your acceptance in the space provided below, noting the option you have selected, and return one copy to this office for our files. If acceptance is not received by this office prior to the close of the Estate's office at 4:00 p.m., Hawaii time, on the 15th day of May, 1997, it is withdrawn.

Very truly yours,

ESTATE OF SAMUEL MILLS DAMON



James M. Whitman
Executive Secretary

Option No. 2, Accepted this
8 day of May 1997.

Lessee

ESTATE OF SAMUEL MILLS DAMON

MEMORANDUM

To: Lessees of the Mapunapuna Industrial Subdivision
with Quarterly Rent Due November 1999

From: James M. Whitman
Chief Operating Officer

Date: October 19, 1999

Re: Increase in Rent of \$0.20 Per Sq. Ft. Per Annum for the
3-year Period Commencing January 1, 2000

Your current rental agreement calls for an increase in your rent by \$0.20 per square foot per annum for the 3-year period commencing January 1, 2000, which is incorporated into the enclosed quarterly rent billing for November 1999.

By way of background, in early 1993, the Trustees concluded rent negotiations with the Mapunapuna lessees for the 10-year period commencing January 1, 1993. The rent established as fair and reasonable was \$3.45 per square foot per annum, with the option for incremental step-ups of \$2.45, \$3.45 and \$4.45 for 3, 3 and 4 year periods, respectively. In October of 1995, the \$1.00 increase scheduled for January 1, 1996 was deferred for a one year period due to a number of circumstances, including the drastic decline in demand for warehouse space, the lack of construction work and the depressed economic conditions in general. In September of 1996, the rent increase that was fully deferred a year earlier was partially deferred for the next 2-year period and rent was lowered from the scheduled \$3.45 to \$2.95 per square foot. The total deferred obligation in the amount of \$2.00 per square foot was subsequently waived by the Trustees. The net result of this was to reduce the average rent for the seven year period from the \$3.45 agreed to \$2.66 per square foot.

Recently, the Estate completed the installation of the new low-pressure sanitary sewer system in Mapunapuna at a cost of some \$6,000,000 to the Estate. The benefits accrued to you by the installation of the sewer system include:

- A cleaner and healthier environment.
- Elimination of the need to pump out cesspools.
- A reduction of the flooding potential by eliminating the saturation of the surrounding soils caused by cesspools.
- The option to upgrade your improvements, thereby increasing the value in your leasehold interest. Previously, the City would not issue permits to allow an increase in density on these properties due to the lack of a sewer system.

As you know, the Damon Estate will be absorbing the cost of maintaining your individual grinder pumps, as well as the service line from the pump to the main sewer line in the street.

Considering that the contracted rent agreed to was \$3.45, the Trustees believe that the proposed rent increase of \$0.20 per sq. ft. per annum is fair and reasonable. If you have any questions, please call 536-3717.

Addendum to Testimony from Michael Steiner

In Support of HB 1593

Hearing Date: February 26, 2009, 2:15 p.m., Room # 325

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	Blackbern & Associates
26	BOC Group, Inc.
27	Boise Cascade Corp
28	Bond, Jan Tr
29	Boulevard, 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, Darlyne
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

To: Committee on Judiciary
Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair
Committee Members
State Capital
Honolulu, Hawaii 96813

From: William A. Paik
President, GP Roadway Solutions

Re: HB 1593 Re: Real Property – Testimony in Support
Hearing Date: Thursday February 26, 2009, 2:15 p.m., Room #325

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.

ACE Hardware**Ben Franklin Crafts**

February 25, 2009

Rep. Jon Riki Karamatsu, Chair
 Rep. Ken Ito, Vice-Chair
House Committee on Judiciary
 State Capitol
 Honolulu Hawaii 96813
 Via Fax 586-8494

RE: House Bill 1593 Relating to Real Property
Hearing Date: February 26, 2009, 2:15 pm., Conference Room 325 State Capitol

Dear Chair, Vice Chair 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.

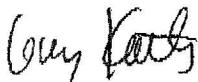
We would like to urge you to pass House Bill 1593 – Relating to Real Estate. Our ground lease with our current landlord, LTMAC Properties, LLC a mainland based REIT came up for renewal on 1/1/09.

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. Currently we are trying to lease out over 8,000 square feet of retail and office space.

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,



Guy Kamitaki

**HB 1593
RELATING TO REAL PROPERTY**

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

FEBRUARY 26, 2009

Chair Karamatsu and Members of the House Committee on Judiciary:

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.

BENDET, FIDELL, SAKAI & LEE

EDWARD R. BENDET
JAY M. FIDELL
WESLEY H. SAKAI, JR.
DENIS LEE
YURIKO J. SUGIMURA
KYLE T. SAKUMOTO
THOMAS R. SYLVESTER*
LORI L. Y. HIJII

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OF COUNSEL
KEITH S. AGENA

*Also licensed in California

February 25, 2009

Representative Jon Karamatsu, Chair
Representative Ken Ito, Vice-Chair
House Committee on Judiciary
State Capitol
Honolulu, Hawaii 96813

Re: TESTIMONY IN SUPPORT OF HB 1593 RE REAL PROPERTY
Hearing: Thursday, February 26, 2009, 2 p.m. Conf. Rm. #325

Dear Chair Karamatsu, Vice-Chair Ito and Members of the Committee:

My name is Jay Fidell and I am general counsel of Citizens for Fair Valuation, Inc., a Hawaii non-profit corporation, which represents industrial and commercial ground lessees in Mapunapuna, Kalihi Kai and Sand Island.

The members of Citizens for Fair Valuation include various industrial and commercial ground lessees in these areas in which HRPT is the landlord. Many of these and other HRPT lessees in the area have gotten very high rent renegotiation proposals.

Although the HRPT lease form provides that the lease rent will be "fair and reasonable", the lease does not explain what "fair and reasonable" means. I do not believe that setting the rent at twice the rent or more is "fair and reasonable", particularly in view of the fact that these ground lessees are generally unable to afford to pay those increases and still operate their businesses and pay their employees.

If they cannot get a fair and reasonable rent from HRPT, they are at risk of losing their businesses and their improvements will revert to HRPT.

Representative Jon Karamatsu, Chair
Representative Ken Ito, Vice-Chair
February 25, 2009
Page 2

If they are charged higher rent, and in most cases it is double what they are paying now, they will have to raise their costs to their customers who buy their products and they in turn will have to increase their prices to the consumers that they serve. In this economy, people can't afford those higher prices and, so there will probably be less purchasing which will then affect their abilities to keep their workers employed.

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 to or relating to my property and not some imagined "highest and best use". Fair and reasonable rent will allow these lessees to continue to operate their business, pay their debts, service their customers and keep their employees working.

For these and other reasons, I urge you to pass this Bill. Thank you for allowing me to testify on this bill.

Very truly yours,



Jay M. Fidell
Of BENDET, FIDELL, SAKAI & LEE

JMF:dt

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:

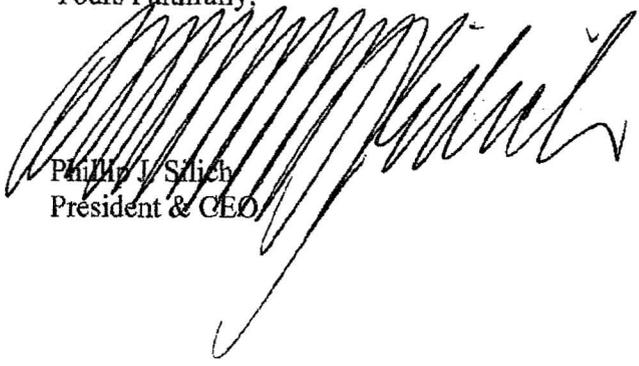
- a. The Mapunapuna area comprising about 200 acres of land and is a filled in former swamp. On high tide the ocean floods the intersection just off Nimitz Highway and Ahua Street to a depth of about 22 inches of water. Potential customers and workers are forced to either go away or negotiate their way 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.

02/20/2009 00:00 FAX 808 839 9813

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,



Philip J. Slich
President & CEO



PLYWOOD HAWAII

1062 Kikowaena Place
Phone (808) 834-1144

Honolulu, Hawaii 96819
Fax (808) 834-1232

February 25, 2009

HB 1593 - RELATING TO REAL PROPERTY

DATE: February 26, 2009

TIME: 2:15 pm

PLACE: Conference Room 325

TO: Committee on Judiciary
Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice Chair

Aloha Chair, Vice Chair, and Members of the Committee,

RE: Testimony in Support of HB 1593

My name is Connie Smales and my husband and I are owners of Plywood Hawaii, Inc., a wholesale plywood and lumber distributor serving the construction industry. Our company has been in business since 1995 and we employ 12 people. I am writing in support of SB764.

This bill will clarify the language in our present leases and allow us to participate in a fair determination of our ground rent. We are seriously concerned about the recent efforts of HRPT to dramatically increase our cost of doing business by doubling or tripling the rent in Mapunapuna, Sand Island and Kalihi Kai areas. They are also attempting to change the leases, which are subject to periodic rent renegotiation by adding an annual step-up of 3 to 4% in addition to the increase, despite the dramatic downturn in the economy.

In requesting such dramatic increases, HRPT, the largest industrial landholder in the State of Hawaii, is attempting to generate unreasonable rents and therefore puts in jeopardy the small and medium sized business of this area that are the lifeblood of the State's economy.

As a small business owner, I share the concerns of other businesses in this area that we receive a fair interpretation of the provisions in our lease. Your passage of this legislation would provide an equal playing field for both lessor and lessee as we face renegotiation of our lease. The ability to pay a fair rent means that we can continue in business as well as continuing to employ the wonderful people who work for our company.

Thank you for your consideration of this legislation.

Sincerely,

Connie Smales
President

Grant Merritt
Dba Sawdust
151-b Pu'uhale Road
Honolulu HI 96819

February 25, 2009

HB 1593 - RELATING TO REAL PROPERTY

DATE: February 26, 2009
TIME: 2:15 pm
PLACE: Conference Room 325

TO: Committee on Judiciary
 Rep. Jon Riki Karamatsu, Chair
 Rep. Ken Ito, Vice Chair

Aloha Chair, Vice Chair, and Members of the Committee,

RE: Testimony in Support of HB 1593

Dear Representatives Karamatsu and Ito and members of the committee:

My name is Grant Merritt and I own and run a small woodworking business in Kalihi Kai. This property is within the old Damon Estate now owned by HRPT.

HRPT has stated that their goal in Hawaii is to raise rents as quickly as possible to make up for losses incurred on the mainland. While I am a sub-lessee, my landlord has said that he is in negotiation now with HRPT and the ground rent may rise to double or triple what it was last year. On a straight pass through, this could translate into a fifty percent or more hike in my rent.

I employ two people and have been in business for three decades. We have just gone through one of the slowest months we have had in perhaps a decade. If my rent goes up 50% I will have a hard time justifying staying in business. My lease option is up in November so I have a way out, but that leaves my landlord, a personal friend since the 1970's, and all of my employees holding the bag. Hardly fair and reasonable.

HB 1593 proposes parameters for "fair and reasonable," a term unique to this lease, and does not in any way change the lease itself. I respectfully request that you pass this bill.

Sincerely,
Grant W. Merritt
Owner, Sawdust

February 26, 2009

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice-Chair
House Committee on Judiciary
State Capitol
Honolulu, Hawaii 96813

Re: HB 1593 Re Real Property
Hearing Date: February 26, 2009, 2:15pm, Room#325

Dear Representative Karamatsu, Representative Ito, 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 the 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.

In front of the House Committee on Economic Revitalization, Business & Military Affairs, HRPT's lawyer stated to the committee that the Department of Hawaiian Homelands had a ground lease available for \$8 per square foot. That statement was more than disingenuous. It was a deliberate lie to the committee. I spoke with the person who handles DHHL commercial leases and the person who won the bid. Lease rates on those properties were determined by a bidding situation. The minimum opening bid was \$5.36 for 25 years, with no increases for the first 10 years. Only two of the current tenants showed up with just one taking the minimum. The other tenant did not bid at all.

When traditional lease contracts include a formula to calculate rents based on land value, the end result could favor the lessor or the lessee depending on the prevailing market conditions. I believe the original drafters of our leases, specifically did not include these formulas in order to hedge their positions. The Damon Estate was "fair and reasonable" with its tenants during its tenure by increasing rents during the good times and decreasing rent increases during the bad times. Even when the increases were already in the contract, they deferred then waived the scheduled increases on their own volition. This is how the contract was meant to be exercised. Currently, if the dispute goes to arbitration, "traditional" valuation standards will be applied. The Damon Estate contracts were purposely meant to be non-traditional.

In HRPT's written testimony, they have stated that this bill interferes with the expectations of the parties and changes the agreed upon terms of the affected lease contracts. The fact is that HRPT has chosen to ignore the expectations and agreed upon terms that the lease rents be "fair and reasonable" by trying to impose rents that are 50 to 90% above market rents. HRPT states that

the lease is "designed to re-align the rental rate to market, whether the result is an increase OR a decrease to the rental rate." In the latest Colliers Monroe Friedlander 3rd quarter 2008 Industrial Market Briefing, market indicators show a decrease in industrial rental rates for 2009. Yet, HRPT insists that they are being fair by asking for annual increases and rates that are clearly above market. They claim to have "worked diligently with tenants to reach creative lease solutions that reflect the current market conditions," but the unprecedented support for Citizens for Fair Valuation by small businesses proves otherwise. None of us would be here in this room today if HRPT lived up to its part of the contract.

Also in HRPT's written testimony is a statement that the proponents of this bill are large, wealthy, Mainland investors. There is nothing large, wealthy, or mainland about my company and nothing could be further from the truth about the vast majority of the businesses in Mapunapuna who could use your support.

Does this bill act as a substantial impairment of a contractual relationship? I believe it does not. The main focus of this bill does not try of re-define the term "fair and reasonable." Apparently not all, but most reasonable people already know what it means to be fair. Instead, it provides an avenue for both parties to live up to the spirit of the contract.

Is it a reasonable and narrowly-drawn means of promoting a significant and legitimate public purpose? I believe it is. This bill focuses on one style of contract from one landlord. In economic times like this, there are only a few things more important to the people of Hawaii than having the legislature support the local economy. 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.

With the local credit markets frozen, it would be mistake for any business to abandon their initial investment in infrastructure because they would not be able to get funding for the cost to relocate and start over. Secondly, we would still be responsible to pay HRPT the rest of the rent for the remaining 15-25 years left on our leases. HRPT would probably hold us to it because no one else will sign a lease with them for the rates they are asking. HRPT knows this and is taking advantage of the situation. Lastly, being centrally located is very important in providing timely delivery to our customers which makes moving westward 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.

When HRPT bought the properties at the end of 2003 from the Damon Estate, they were generating a rental income of around 7%. Today, with the stock market down 46%, the real estate investment trust market down 50-70%, and the economy in the worst shape since I can remember, HRPT expects to increase their return by more than double?

By passing this bill through your committee, you will send a message to the people of Hawaii that you care about the local economy and the plight of small business. I respectfully ask for your support on this bill and thank you for the opportunity to testify.

Sincerely,

**Jason Ideta
Pacific Jobbers Warehouse, Inc.**