

fax (808) 842-3206 fax (808) 672-3998



February 1, 2010

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 2284 Re: Relating to Real Property – Testimony in Support Hearing Date: Tuesday, February 2, 2010, 8:30 AM, Room 312

Dear Representatives McKelvey, Choy and Members of the Committee:

My name is Robert Creps, and I am the Senior Vice President of Administration for Grace Pacific Corporation, which holds five ground leases with affiliates of HRPT Properties Trust in the Mapunapuna and Sand Island areas. I have also served as the President of the Citizens for Fair Valuation since December 2007.

Act 189 was passed last year with a one year sunset provision, based on the belief that HRPT needed a little more time to get its act together in the rent re-setting process. I am attaching a letter from Mr. David Lepore of HRPT Properties Trust dated April 9, 2009 evidencing this hope.

Based upon my personal observations, HRPT has yet to get their act together.

HRPT claims that Act 189 re-writes the lease contract. Nothing could be further from the truth. It is HRPT who for the past two years has attempted to unilaterally change the language of our leases.

HRPT claims that Act 189 precludes their ability to negotiate with lessees. Again, nothing could be further from the truth. One year ago, prior to Act 189, there were more than 20 rent re-sets pending with dates of January 1, 2009 and earlier. Today they all remain in limbo.

HRPT has not changed as they had promised.

We need Act 189 extended for five years.

I respectfully request that you approve House Bill HB2284.

Thank you.

asken hip

"An Equal Employment Opportunity Employer"

400 Centre Street, Newton, MA 02458-2076



April 9, 2009

Robert Creps, Sr. VP Hawaiian Bitumuls Paving Grace Pacific Corp. P.O. Box 78 Honolulu, HI 96810

Dear Mr. Creps:

I am the Chief Operating Officer and Senior Vice President of HRPT Properties Trust, and I would like to share with you some recent developments regarding HRPT and the Hawaii office of its affiliate and property manager Reit Management & Research LLC (RMR).

We have made a change in leadership, and for the interim Chris Woodard will be Acting Vice President in charge of our Hawaii office. Chris has been with HRPT and its affiliates for five years working in our headquarters office outside Boston and is highly respected throughout our organization. He has been on the ground in Honolulu for the past 10 weeks and is committed to remain in place until we fill the Hawaii Vice President role on a permanent basis. Chris can be reached by calling 808-599-5800 or via email at cwoodard@reitmr.com.

Our Honolulu office is fully committed to meeting its goal of responding to any tenant inquiry within one business day, and we are in the process of increasing our staffing levels to achieve this. I would remind you that we have an emergency hotline for property management issues (808-945-1185). Resolution of your request might take longer than one business day; however, you will receive a timely return call or email to let you know that your issue is being addressed. In addition, if you have questions regarding any upcoming rent re-opening, I encourage you to call our Honolulu office to schedule a meeting.

l also would like to inform you of two changes in our policies regarding rent negotiations and comparable market data. We no longer require tenants or potential tenants in our Oahu industrial market to sign confidentiality agreements before entering negotiations for rent re-sets, lease renewals or new

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tel: (617) 332-3990 fax: 617-332-2261

leases. In addition, going forward, we will release transaction comparables to commercial real estate brokers and appraisers upon request, when contractually permitted. It is our hope that these changes will help tenants make better informed decisions and result in a smoother renegotiation process for all parties.

For our James Campbell Industrial Park tenants, we will be opening an onsite office and establishing regular business hours there. We will notify you when the office opens and of its hours of operations in a subsequent letter.

We remain committed to supporting our Hawaii tenants and thank you for the opportunity to strengthen our relationship.

Best regards,

Daid M. Lepore

David M. Lepore Senior Vice President and Chief Operating Officer HRPT Properties Trust



P.O. Box 4319 Honolulu, Hawaii 96812

Tol (808) 833-2502 Fax (808) 834-5630 www.GPRo3dwaySolutions.com

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The issues brought before the legislature during the last session have only worsened. However, extending Act 189 by the passing of HB2284 will help the welfare of the Hawaii community and businesses by stabilizing our downward spiraling economy.

I respectfully request that you approve House Bill IIB2284.

Aloha, we a P

William Paik 3940 Harding Ave Honolulu, Hawait 96816 (808) 226-4641 williamapaik(@aol.com



P. Februarysi H2000, Hawaii 96812

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Aloha,

Lenny Santos 660 Mapunapuna Street Honolulu, HI 96819 833-2502 Isantos@gproadwaysolutions.com



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I respectfully request that you approve House Bill HB2284.

Guy Guillermo 660 Mapunapuna Street Honolulu, Hawaii (808) 275-5398 gguillermo@unistruthawaii.com



660 Mapunapuna Street, Honolulu, Hawaii 96819

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Chris Talyor

660 Mapunapuna Street Honolulu, Hawaii (808) 833-2502



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Tobey Buendia 660 Mapunapuna Street Honolulu, Hawaii (808) 833-2502



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Ashton Kipi 660 Mapunapuna Street Honolulu, Hawaii (808) 833-2502



P.O. Box 4319, Honolulu, Hawaii 96812-4319

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Aloha,

Janel Bumanglag P.O. Box 4319 Honolulu, Hawaii 96812-4319 (808) 674-2112 x.229 jbumanglag@gproadwaysolutions.com

Re: HB 2284 Re: Relating to Real Property – **Testimony in Support** Hearing Date: Tuesday, February 2, 2010, 8:30 AM, Room 312



660 Mapunapuna Street, Honolulu, Hawaii 96819

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Jence Kona 660 Mapunapuna Street Honolulu, Hawaii (808) 833-2502



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Perus & maki

Perry Makanui 660 Mapunapuna Street Honolulu, Hawaii (808) 833-2502



Tel (808) 833-2502

Fax(808) 834-5630

660 Mapunapuna Street, Honolulu, Hawaii 96819

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Aloha,

Edna Dunn edunn@gproadwaysolutions.com



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Aloha,

Mark Sakihara 153 A. Alamaha St. Kahului, Hawaii 808-873-7461 msakihara@gproadwaysolutions.com

### GPROADWAY SOLUTIONS

#### 660 MAPUNAPUNA ST

#### HONOLULU, HAWAII 96819

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Aloha,

Candice U. Aniya 91-1206 Kauiki St. Ewa Beach, Hawaii 96706 808-256-8467 caniya@gproadwaysolutions.com

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Noel Perreira

660 Mapunapuna Street Honolulu, HI 96819 808-833-2502 nperreira@gproadwaysolutions.com



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Please approve House Bill HB2284.

Aloha,

Keoki Kauhi 660 Mapunapuna St. Honolulu, Hawaii 808-833-2502 kkauhi@petersonsign.com

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Aloha,

Bill Jurner

Bill Turner 660 Mapunapuna Street Honolulu, HI 96819 808-833-2502 bturner@gproadwaysolutions.com

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Aloha,

MUSIUMA

Nicole Yuh 660 Mapunapuna Street Honolulu, HI 96819 808-833-2502 nyuh@gproadwaysolutions.com

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Aloha. Nicole Beaudoin

660 Mapunapuna Street Honolulu, HI 96819 808-833-2502 nbeaudoin@gproadwaysolutions.com

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Sudget Kawasahi

Bridget Kawasaki 660 Mapunapuna Street Honolulu, HI 96819 808-833-2502 bkawasaki@gproadwaysolutions.com

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Aloha,

Cherry Munoz 660 Mapunapuna Street Honolulu, Hawaii 833-2502 cmunoz@gproadwaysolutions.com

## **GP ROADWAY SOLUTIONS**

February 1, 2010

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Aloha,

Jenny Campos PO Box 4319 Honolulu, HI 96812 (808) 833-2502 jcampos@gproadwaysolutions.com

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Re: HB 2284 Relating to Real Property - **Testimony in Support** Hearing Date: Tuesday, February 2, 2010, 8:30 AM, Room 312

Dear Representatives McKelvey, Choy and Members of the Committee:

## TESTIMONY IN SUPPORT OF HB 2284 RELATING TO REAL PROPERTY

Dear Senators Baker, Ige and Members of the Committee:

I support HB 2284 and respectfully request that extend the life of Act 189. My name is <u>Genoveva Napoletano,</u> I live in <u>91-1000 Lele'oi St. Ewa Beach, Hawaii 96706</u>. I work at <u>GP</u> <u>Roadway Solutions, Inc.</u>, which is located in the Mapunapuna/Sand Island/Kalihi Kai area, and employ roughly <u>200</u> people.

Many of my neighbors have family members who have lost their jobs, had their hours reduced, or have businesses which are barely surviving. This past year, our business has slowed tremendously and we are trying to cut expenses before we have to cut benefits and lay off workers.

Rent is one of the largest expenses we face. Up to now, the rents charged by the Damon Estate were "fair and reasonable," which is what the lease specifically calls for. The new owner, HRPT, continues to demand rents that excess of the current market and, on top of that, are demanding we pay annual escalations of 3% to 4%. Rent escalations are not part of our lease terms and just not feasible in these times of decline. In addition, HRPT is requiring that we sign away our rights under the existing law (Act 189) now and throughout the life of our leases. Is this fair?

HRPT, by prohibiting access to comparable rent information is forcing lessees into take-it-orleave-it deals, and denying the ability to negotiate a fair rent. Through their sheer size and oligopolistic control of the market, they are subverting market forces to provide unprecedented returns. The small businesses and consumers of Hawaii need Act 189 extended to remind HRPT that it needs to set fair rents.

The issues brought before the legislature during the last session have only worsened. HRPT has not abided by its word to improve relationships and honor the course of action set by the Damon Estate. Act 189 was written to redress these issues and unfortunately HRPT has failed in its obligation to provide "fair and reasonable" rents. Instead, it has redoubled its efforts to intimidate and force lessees into costly arbitrations proceedings while ignoring the arbitration results achieved by others. These actions seem to be driven by simple greed.

Passage of HB2284 will extend Act 189 and hopefully remind the landowner to negotiate terms based on what is happening here, in Hawaii's economy, rather than trying to make up for losses

on the mainland. I want to stay in business and I want to keep my workers employed. Please continue what you agreed to do last session by passing HB2284. Thank you.

Genoveva Napoletano GP Roadway Solutions, Inc. 660 Mapunapuna S.t, Honolulu, Hawaii 96819 Phone (808) 674-5223 Email: gnapoletano@gproadwaysolutions.com

David Takiguchi 2625 Myrtle Street Honolulu, Hl 96816

February 1, 2010

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 2284 Re: Relating to Real Property – Testimony in Support Hearing Date: Tuesday, February 2, 2010, 8:30 AM, Room 312

Dear Representatives McKelvey, Choy and Members of the Committee:

I support passage of House Bill HB2284 which is a bill to extend Act 189. The purpose of the Act is to help stabilize our economy by setting parameters that will encourage open and transparent negotiation in long-term ground leases which support Hawaii's critical commercial and industrial business community. Act 189 does not change the terms or language of the leases. In fact, Act 189 should strengthen the relationship between lessor and lessee. In 2009 Legislative session, SB764 was passed by both House and Senate and the Governor allowed it to become law as Act 189.

The issues brought before the legislature during the last session have only worsened. However, extending Act 189 by the passing of HB2284 will help the welfare of the Hawaii community and businesses by stabilizing our downward spiraling economy.

I respectfully request that you approve House Bill HB2284.

Aloha,

David Takiguchi 2625 Myrtle Street Honolulu, HI 96816 808-275-5271 dtakiguchi@gproadwaysolutions.com



The REALTOR® Building 1136 12<sup>th</sup> Avenue, Suite 220 Honolulu, Hawaii 96816

February 1, 2010

## The Honorable Angus L.K. McKelvey, Chair

House Committee on Economic Revitalization, Business, & Military Affairs State Capitol, Room 312 Honolulu, Hawaii 96813

## **RE:** H.B. 2284 Relating to Real Property

## HEARING: Tuesday, February 2, 2010 at 8:30 a.m.

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

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,800 members in Hawai'i. HAR **opposes** H.B. 2284 that extends Act 189, SLH 2009 to June 30, 2015.

Although HAR empathizes with the lease situation businesses are facing in Mapunapuna, Kalihi Kai and Sand Island, we are deeply concerned with the unintended consequences this legislation may have on commercial and industrial leases in Hawai'i.

Act 189, which went into effect on July 1, 2009, only applies to leases renegotiations when the terms of the lease are based on "fair and reasonable" annual rent. As we noted in our prior testimony in opposition, the measure is a disincentive for lessors to include lease terms requiring a "fair and reasonable" annual rent.

HAR believes that the process of appraisals, mediation, arbitration and as a last option the court system should be the appropriate venue for lease interpretation and contractual disputes.

For the above reasons, we ask the Committee to hold this measure.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.





# Hawaii Select Investments Inc.

February 1, 2010

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 2284 Re: Relating to Real Property – Testimony in Support Hearing Date: Tuesday, February 2, 2010, 8:30 AM, Room 312

Dear Representatives McKelvey, Choy and Members of the Committee:

I support passage of House Bill HB2284 which is a bill to extend Act 189. The purpose of the Act is to help stabilize our economy by setting parameters that will encourage open and transparent negotiation in long-term ground leases which support Hawaii's critical commercial and industrial business community. Act 189 does not change the terms or language of the leases, only encourages fairness and equity in negotiations.

The concentration of commercial land ownership on Oahu undermines the normal free market forces that would otherwise ensure fair dealing. Because of this economic power, landlords seek to extract extraordinary rents from tenants who have little choice or power to find alternatives. As a consequence, these landowners conduct what is essentially economic "strip mining" of our local businesses; extracting profits that our local businesses need to expand and invest in Hawaii's economy & jobs, and sending that money off to mainland owners.

I respectfully request that you approve House Bill HB-2284.

Aloha,

Beb Demit

Bob Dewitz CEO, Hawaii Select Investments Inc. 2308 Pahounui Drive, Honolulu, HI 96819 Ph. 848-0751

2308 Pahounul Drive, Honolulu, HI. 96819



215A Railroad Ave., Hilo, HI 96720 • Ph: (808) 935-8595 • Fax: (808) 935-1698 800 Alua St., Wailuku, Maui, HI 96793 • Ph: (808) 244-9158 • Fax: (808) 242-5815 1856 Haleukana St., Lihue, Kauai, HI 96766 • Ph: (808) 245-8472 • Fax: (808) 246-6156 74-5039B Queen Kaahumanu Hwy., Kailua, Kona, HI 96740 • Ph: (808) 326-1212 • Fax: (808) 326-1822 918 Ahua Street, Honolulu, HI 96819 • Ph: (808) 839-7202 • Fax: (808) 839-9813 • PARTS Ph: (808) 839-7707

February 1, 2010

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 2284 Re: Relating to Real Property – **Testimony in Support** Hearing Date: Tuesday, February 2, 2010, 8:30 AM, Room 312

Dear Representatives McKelvey, Choy and Members of the Committee:

I support passage of House Bill HB2284 which is a bill to extend Act 189. The purpose of the Act is to help stabilize our economy by setting parameters that will encourage open and transparent negotiation in long-term ground leases which support Hawaii's critical commercial and industrial business community. Act 189 does not change the terms or language of the leases. In fact, Act 189 should strengthen the relationship between lessor and lessee. In 2009 Legislative session, SB764 was passed by both House and Senate and the Governor allowed it to become law as Act 189.

The issues brought before the legislature during the last session have only worsened. However, extending Act 189 by the passing of HB2284 will help the welfare of the Hawaii community and businesses by stabilizing our downward spiraling economy.

I respectfully request that you approve House Bill HB2284.

Aloha,

Phillip J. Silich Bacon Universal Company, Inc. 918 Ahua Street Honolulu, HI 96819 808-839-7202 PSilich@baconuniversal.com

www.baconuniversal.com

## MUTUAL PLUMBING SUPPLY

2812 Awaawaloa Street, Honolulu, Hawaii 96819 Phone 808-839-9076 Fax 808-833-2085

January 30, 2010

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 2284 Re: Relating to Real Property – **Testimony in Support** Hearing Date: Tuesday, February 2, 2010, 8:30 AM, Room 312

Dear Representatives McKelvey, Choy and Members of the Committee:

I support passage of House Bill HB2284 which is simply written to extend the sunset of Act 189. The issues brought before the legislature during the last session have only worsened. However, extending Act 189 by the passing of HB2284 will help the welfare of the Hawaii community and businesses and to stabilize the rents lessors charge and lessees pay.

Please approve House Bill HB2284.

Aloha,

Clyde T. and Allison C. Kojima, Owners Mutual Plumbing Supply Co., Inc. 2812 Awaawaloa Street Honolulu, HI 96819 (808)839-9076 / (808)833-2085 (fax) email: mutualpls@hawaiiantel.net



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 2284 Relating to Real Property – Testimony in Support Hearing Date: Tuesday, February 2, 2010, 8:30 AM, Room 312

Dear Representatives McKelvey, Choy and Members of the Committee:

TESTIMONY IN SUPPORT OF HB 2284 RELATING TO REAL PROPERTY

Dear Senators Baker, Ige and Members of the Committee:

I support HB 2284 and respectfully request that extend the life of Act 189. My name is Brian Joy, and I am co-owner of our manufacturing company, Big Rock Mfg. Inc., which is located in the Mapunapuna area. I used to employ roughly twelve people in production. Last year I had to reduce that number to four due to the poor economy

Many in Hawaii have lost their jobs, had their hours reduced, or have businesses which are barely surviving. This past year, our business has slowed tremendously and we are trying to cut expenses before we have to cut benefits and lay off more workers.

Rent is one of the largest expenses we face. Up to now, the rents charged by the Damon Estate were "fair and reasonable," which is what the lease specifically calls for. Rent escalations are not part of our lease terms and just not feasible. We are still awaiting a reply sent to HRPT last September, to extend the terms of our lease for our additional ten year option, and have not yet received a reply. Our lease will expire in October of this year. The new owner, HRPT, continues to demand rents that excess of the current market and, from what I understand, are demanding annual escalations of 3% to 4 %. In addition, HRPT is requiring that we sign away our rights under the existing law (Act 189) now and throughout the life of our leases. This is simply not right.

HRPT, by prohibiting access to comparable rent information is forcing lessees into take-it-or-leave-it deals, and denying the ability to negotiate a fair rent. Through their sheer size and oligopolistic control of the market, they are subverting market forces to provide unprecedented returns. The small businesses and consumers of Hawaji need Act 189 extended to remind HRPT that it needs to set fair rents.

HRPT has not abided by its word to improve relationships and honor the course of action set by the Damon Estate. Act 189 was written to redress these issues and unfortunately HRPT has failed in its obligation to provide "fair and reasonable" rents. /Instead, it has redoubled its efforts to intimidate and force lessees into costly arbitrations proceedings while ignoring the arbitration results achieved by others. These actions seem to be driven by simple greed.

Passage of HB2284 will extend Act 189. I am entering my 28<sup>th</sup> year with my business which employs our locals and supports our Hawaiian economy. I want to stay in business and I want to keep my workers employed. Please continue what you agreed to do last session by passing HB2284. Mahalo

Bonnie L. Cooper Vice President/Owner Big Rock Manufacturing Inc.

Email: bcooper@bigrockhawaii.com

**TANUFACEURING** 

1050 Kikowaena Place • Honolulu, HI 96819 • Ph: (808) 834-ROCK (7625) • Pax: (808) 836-8682 • Toll Free: 866-344-ROCK (7625)



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 2284 Relating to Real Property - Testimony in Support

Hearing Date: Tuesday, February 2, 2010, 8:30 AM, Room 312

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Passage of HB2284 will extend Act 189. I am entering my 28<sup>th</sup> year with my business which employs locals and/ supports our Hawaiian economy. I want to stay in business and I want to keep my workers employed. Please continue what you agreed to do last session by passing HB2284. Mahalo.

Brian S. Joy President/Owner Big Rock Manufacturing Inc.

Email: bjoy@bigrockhawaii.com

1050 Kikowaena Place • Honolulu, HI 96819 • Ph: (808) 834-ROCK (7625) • Fax: (808) 836-8682 • Toll Free: 866-344-ROCK (7625)

#### SAWDUST

## January 26, 2010

February 1, 2010

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 2284 Re: Relating to Real Property – **Testimony in Support** Hearing Date: Tuesday, February 2, 2010, 8:30 AM, Room 312

Dear Representatives McKelvey, Choy and Members of the Committee:

I support passage of House Bill HB2284 which is a bill to extend Act 189. The purpose of the Act is to help stabilize our economy by setting parameters that will encourage open and transparent negotiation in long-term ground leases which support Hawaii's critical commercial and industrial business community. Act 189 does not change the terms or language of the leases. In fact, Act 189 should strengthen the relationship between lessor and lessee. In 2009 Senate (SB764) which preceded Act 189 was passed by both House and Senate and the governor allowed it to become law.

The issues brought before the legislature during the last session have only worsened. However, extending Act 189 by the passing of HB2284 will help the welfare of the Hawaii community and businesses by stabilizing our downward spiraling economy.

HRPT has not even responded to my landlord's efforts to negotiate. Our ground lease was up for renegotiation over a year ago, and HRPT expects to charge us penalties for not settling even though they are not responding. Hardball is too soft a term, financial terrorist is closer, I think. They are not good corporate citizens. There is no reason to consider them to be. I feel their goal is to push all of our industrial businesses (those that survive) into their Campbell property and to up-zone Mapunapuna and Kalihi Kai to commercial. Fair enough, but a viable city needs certain of it's industry within the city proper. Good for HRPT maybe, but not so good for Honolulu.

I respectfully request that you approve HB2284.

Mahalo, Grant Merritt Owner Sawdust 151-B Pu'uhale Road Honolulu HI 96819 841-6066

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: H8 2284 Relating to Real Property in Support Hearing Date: Tuesday, February 2, 2010, 8:30 AM, Room 312

Dear Representative McKelvey, Choy and Members of the Committee:

My name is lason ideta and I support HB2284. 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 49 full-time and 2 part-time employees who have worked very hard to build the business over the last 24 years.

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.

In HRPT's prior 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 <u>QR</u> a decrease to the rental rate." In the latest Colliers Monroe Friedlander 3<sup>rd</sup> quarter 2009 Industrial Market Briefing, market indicators show a decrease in industrial rental rates for 2008, 2009, and 2010. 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.

If our rents double, we may have 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 with our large mainland competitors.

Since the passage of Act 189, HRPT has continued its unfair practices and has disrespected the intentions of the legislature to improve rent negotiations by encouraging the parties to be fair and reasonable. By passing this bill through your committee, you will send a message to the people of Hawaii that you care about the plight of small businesses and will not be intimidated or swayed by a large company with its fancy D.C. lawyers and well paid lobbyist. I respectfully ask for your support on this bill and thank you for the opportunity to testify.

Sincerely, Jaron chita

Jason Ideta Pacific Jobbers Warehouse, Inc.

## 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 OSWALD STENDER, DIRECTOR MICHAEL STEINER, EXEC. DIRECTOR

January 31, 2010

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 2284 Relating to Real Property – <u>Testimony in Support</u> Hearing Date: Tuesday, February 2, 2010, 8:30 AM, Room 312

Dear Representatives McKelvey, Choy and Members of the Committee:

My name is Michael Steiner. I am the Executive Director of Citizens for Fair Valuation ("CFV"), a nonprofit 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 large Real Estate Investment Trust (REIT) headquartered in Newton, Massachusetts.

With this purchase and others in West Oahu, HRPT is now the largest owner of commercial and industrial land in Hawaii with roughly 20 million square feet of land. HRPT controls rents on almost all of the near-town commercial and industrial land.

## Need for HB 2284

HB 2284 seeks to extend the sunset date of Act 189 from June 30, 2010 to June 30, 2015. No other changes or amendments are contained in the bill.

With the passage of Act 189, Citizens for Fair Valuation had hoped that lessor, HRPT, would alter its business model such that open and transparent negotiations would lead to acceptable rents for both parties and that Act 189 would sunset as written. Unfortunately, HRPT has instead chosen to continue its campaign to intimidate lessees through take-it-or-leave-it (TIOLI) offers that are twice the going market rate, demanding lease amendments to include terms favorable just to HRPT, and going so far as to require lessees to waive their Act 189 rights now and forever.

HRPT appears to be obsessed with pushing rents well in excess of the current market. Even after a hardfought arbitration award came in with a flat rate of \$5.26 per square foot for the next 10 years, HRPT continues to demand lessees accept rents in the \$7.00 per sq. ft. range along with annual escalations of between 3% and 4%. These rents average out to roughly \$8.40 per sq ft – a huge difference. Lessees' offers to pay the arbitrated rate of their neighbor have been ignored or returned with a TIOLI-type letter. HB 2284 is needed to again remind HRPT that its contracts call for good faith negotiation and ultimately "fair and reasonable rents." HRPT seems to have deliberately chosen to ignore Act 189 and the spirit of its commitments to its lessees and the legislators over these past several months.

## **Arbitration**

Should the lessor and lessee fail to reach agreement through negotiation, the lease requires the parties to enter binding arbitration. This process is extremely expensive, time consuming and intimidating. Lessees need to hire attorneys, appoint an appraiser to sit on the panel, contract with experts to provide economic information, and appraisers to express their expert opinion as to the rent. This is like a trial and the costs can be huge. For the everyday small business owner in the area, arbitration is an economically terrifying process. It means having to confront the oligarchic landowner in an arena that is alien and unknown.

During this past year, although some 20 businesses have been awaiting rent resets, only one company has gone through a completed arbitration - Servco. Although the arbitration costs were quite large, instead of paying the rent of \$7.00 per square foot plus 4.0% annual increase that HRPT demanded, an equivalent of \$8.40 per foot over that period, the arbitration panel awarded Servco a rate of \$5.26 with no annual increases and none of the lease amendments that HRPT has customarily and inappropriately demanded.

A PBN article, **Servco wins arbitration on HRPT rent** (January 29, 2010), reported that Servco's arbitration for its 9.6-acre lot in Mapunapuna was confirmed in court for \$5.26 per square foot annual rent, or \$2.2 million per year, for 10 years. Author Janis Magin, reported that, "Servco...had been paying \$2.95 a square foot," and that, "HRPT wanted Servco to pay \$7 plus 4 percent increases each year for 10 years, putting Servco's annual rent at \$4.2 million by the end of the lease."

Within the article, Tim Bonang, HRPT's Director of Investor Relations, "noted that Servco's new rent reflects a 78 percent increase over what it had been paying." He went on to say,

I think the fact that the Servco arbitration still came out at close to an 80 percent increase is where the market is right now. At the end of the day, absent any legislative interference, our rental rates have been driven by the market. For better or worse that's the way the agreements have been set up.

If the market, per Tim Bonang, is \$5.26 per square foot, why is HRPT still demanding \$7.00 plus 4% increases? In the Servco re-set, this would have been an increase of roughly 240%. "For better or worse," HRPT needs to accept that the economy and market do not support 240% rent increases.

Despite the flat \$5.26 Servco award, lessee requests to reset their rents at the same or similar rate are routinely ignored. Instead, lessees receive letters take-it-or-leave-it (TIOLI) offers back in the \$7.00 plus 3% to 4% per year range. Lessees, given just 2 weeks to accept the TIOLI offer, are informed that non-agreement will result in the commencement of arbitration proceedings.

HRPT needs to stop bullying and gouging lessees. HRPT needs to stop intimidating lessees into unrealistic above-market deals in order to control and set the market above its natural position. HRPT

needs to stop wasting the scant economic resources of lessees with costly arbitrations which, most likely, will continue to show lowering rents as is predicted by many real estate professionals.

Tim Bonang went on to tell PBN, "If everyone seems satisfied with this process, why is there a need for legislation?"

In response, CFV fears that without Act 189, HRPT will rejoice in its "victory" and redouble its efforts to intimidate lessees into 240% increases which are unrealistic, unfair and unreasonable.

# <u>Act 189</u>

During the 2009 legislative session, testimony was presented before this committee as well as the House Judiciary Committee on HB 1593 and SB 764. Both bills sought to remind lessors with leases that call for "fair and reasonable rents" that those rents shall be fair and reasonable to *both* the lessor and the lessee.

SB 764 was approved and passed by both houses and Governor Lingle allowed the bill to become law without her signature. Citizens for Fair Valuation is before this committee again to seek, through HB 2284, an amendment to extend the sunset provision of Act 189 to June 30, 2015.

In allowing Act 189 to become law, Governor Lingle wrote:

[T]his bill addresses a case where the free market between lessor and lessee is not functioning. We have seen a concentration of land ownership of urban commercial and industrial properties become centered in a few large firms that distort market forces and leave businesses in Hawaii with little recourse.

It is unfortunate that the actions of a single land owner have created the situation where the Legislature has intervened between the parties, albeit only for a single year.

When HRPT Properties Trust purchased the Damon properties and leases in 2003, it chose to take title to the property under 6 separate legal entities: Master Properties LLC; Robin 1 Properties LLC; Tanaka Properties, LLC; LTMAC Properties; LLC, TSM Properties LLC; and, Z & A Properties LLC. Therefore HRPT Properties Trust is not truly a ground lessor under any of the Damon Estate leases. Instead, there are 6 separate ground lessors, each ground lessor of a certain portion of the Damon Estate property, likely done to insulate HRPT from the liability of these ground leases.

Commercial and industrial businesses have long been recognized as a fundamental part of a community's economic base and that those businesses are often the engine of economic growth within a community. The Legislature was aware that "[t]he commercial and industrial properties that exist within the State's urban districts are primarily owned by a few landowners" and that the small businesses on these lands supply crucial goods and services to Honolulu businesses (Act 189, §1).

It is therefore appropriate and legitimate for the Legislature to extend Act 189 in order to reduce the likelihood that industrial operations serving Honolulu would have to reduce their workforce, raise consumer prices or worse, be forced to close their doors forever.

# **HRPT's Stated Objective**

In August of 2008, Adam D. Portnoy, Managing Director of HRPT, announced the company's plan during their 2<sup>nd</sup> Quarter Earnings call. Portnoy declared that,

"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's corporate attitudes have not changed since then. HRPT appears to be looking to Hawaii to satisfy its cash requirements without regard to our local businesses' ability to keep their employees working and their businesses operating. Despite the fact that comparable rents have been dropping during this recession, Portnoy reaffirmed that "[y]ou're going to see over the next 18-24 months [HRPT] continue to try to push rates as much as we can."

HRPT has bent every effort and stratagem to further leverage its oligarchic control of the land to force rates artificially higher than the actual rental market. As the largest owner of near-town commercial and industrial land, HRPT apparently feels it is entitled to force lessees into astronomical rents without regard for its obligation under the lease to provide "fair and reasonable annual rents."

In February of 2009, Adam Portnoy told investors that, "[e]veryone wants to see what's going to happen [in Hawaii]? What's the state legislature going to do? Are they actually going to pass some sort of crazy bill that says that you can't raise rents ...?"

Act 189 does not change the terms of the existing leases. Act 189 does not set rents. Act 189 does not say rents should be below or above what is fair and reasonable to both the parties. Act 189 merely reminds HRPT of the terms of the contract and seeks rents that are fair and reasonable for both parties. It is not a measure that stops HRPT from raising rents, only from raising them beyond fair and reasonable. Clearly, that is exactly what HRPT would like to do, and what it is trying very hard to accomplish.

# HRPT – Intimidation Continues

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

With the sale of the property to Massachusetts-based HRPT, the old ways were discarded. Instead of "fair and reasonable" good faith negotiations, HRPT originally demanded that lessees sign confidentiality agreements before negotiations could begin. This was clearly an attempt to control the disclosure of rent comparables and pit neighbor against neighbor.

During the legislative hearings last year, David Lepore announced in a widely disseminated letter of April 9, 2009 that HRPT would "no longer require tenants or potential tenants in our Oahu industrial market

#### Citizens for Fair Valuation Testimony in Support of House Bill 2284 - Real Property; Leasehold; Lease Rent Renegotiation Hearing Date Tuesday, February 2, 2010, 8:30 AM, Room 312

to sign confidentiality agreements before entering negotiations for rent re-sets, lease renewals or new leases." He added, "In addition, going forward, we will release transaction comparables to commercial real estate brokers and appraisers upon request, when contractually permitted." This was a public promise, and HRPT has abandoned it.

To-date, only a few rent comparables have been widely distributed and while HRPT has stopped demanding confidentiality agreement before negotiations, HRPT has continued to demand confidentiality on lease assignments and certain rent resets.

In the same letter, Lepore stated, "Our Honolulu office is fully committed to meeting its goal of responding to any tenant inquiry within one business day, and we are in the process of increasing our staffing levels to achieve this. Resolution of your request might take longer than one business day; however, you will receive a timely return call or email to let you know that your issue is being addressed."

Unfortunately, HRPT turned its back on this public promise too. Lessees routinely report that phone calls are not returned and letters with rent counter-offers never receive a reply. In one instance, a tenant wrote to the local office in the middle of June 2009 only to receive a reply in mid-January of 2010, a delay of seven (7) months. How can a business do any kind of meaningful budgeting when the company that controls your rent, and effectively your business livelihood, does not communicate in a timely and efficient manner?

To make matters worse, HRPT is now forcing lessees to waive their rights under Act 189 before negotiations can begin. Current offer letters include the following paragraph:

<u>Act 189</u>: Lessor and Lessee acknowledge and agree that Act 189 of the 2009 Hawaii State Legislature, together with any similar related and/or unrelated, and/or successor act, statute, law, ordinance or regulation which purports to change existing lease terms, shall not apply to the terms of the Lease, and any and all rental and/or value determinations shall be made without regard thereto.

Is this fair and reasonable?

Again, Tim Bonang just told PBN, "If everyone seems satisfied with this process, why is there a need for legislation?"

# Fair and Reasonable

Merriam-Webster's Online Dictionary defines 'fair" as, "marked by impartiality and honesty; free from self-interest, prejudice, or favoritism." To be fair, then, means not to be unfair. The same dictionary defines "reasonable" as, "being in accordance with reason; not extreme or excessive." To be reasonable, then, means not to be unreasonable.

By the nature of these definitions, the term "fair and reasonable rent" should imply negotiations that are good faith, open and honest with results that are not excessive. In other words, the conflicting interests of both the lessor and lessee are to be balanced in determining rent and that extremes on either side are to be avoided.

# **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 good-will built up over years of occupying the same location, the lessees' buildings represent a huge investment for them. Moving to another location is not an option - the lessee is bound to pay rent to the lessor whether or not they occupy the land for the duration of the long-term lease. Most lessees in the area have at least 20 years to go on their lease obligations.

Without parameters to ensure that "fair and reasonable" rents will apply to both parties, the mainland owner can use the leverage of its sheer size, power and market control to unilaterally impose rents that are intentionally way above market. In essence, they are using their monopolistic power to manipulate what might otherwise be a free market and in so doing make it difficult or impossible for tenants to stay in business. In the circumstances, public policy and concern about the economy has demanded legislative action.

# 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 doing business here and by all indications, cares little for the responsibilities of Aloha and Pono that come with the privilege of owning land in Hawaii.

In Mapunapuna, the tidal flooding on Ahua Street continues unabated. Lessees, customers and suppliers are forced to either drive through or around the brackish waters. This adds time and expense to everyone concerned. HRPT seems content to own the land, providing little or no investment, care or concern for maintenance or improvement, but only for pushing up rents to twice the neighboring market. Is this fair and reasonable?

Citizens for Fair Valuation ("CFV") is a non-profit coalition of businesses that lease land from HRPT. We have sent letters to HRPT offering to meet with them to discuss how we can mutually resolve these issues to the benefit of all concerned. However, HRPT has universally rejected our supplications and has gone so far as to have their Washington, D.C., attorney threaten legal recourse for harassment. Where is the Aloha and Pono that we had hoped would come from HRPT as Hawaii's largest and most powerful commercial and industrial landowner? In opposing Act 189 last year, HRPT made a spate of promises to this legislature, promising respect and consideration for the businesses whose future it controls. Now only a few months later, where have all those promises gone?

# **Conclusion**

The lessees with HRPT leases are hard working business people who would rather conduct their businesses, which is getting harder to do each day, than campaign for new or extended legislation. They do not object to paying rent that is fair and reasonable and fairly negotiated and determined by applicable economic and market factors including, but not limited to, applicable comparables, and the use and characteristics of property and neighborhood (i.e., regular flooding on the streets and in the streams). They do, however, strongly object to a lessor who uses "take-it-or leave-it" tactics while continuing to insist on rents from \$7.00 to \$10.00 per sq. ft., with annual increases from 3.0% to 4.5 % even after the Servco arbitration awarded a flat \$5.26 for the next 10 years.

In these hard times, small businesses need support and assistance from government. The state cannot afford to suffer more closures and loss of employment. In particular, the businesses in the Mapunapuna, Kalihi Kai and Sand Island area are an important part of the economy of these islands. Their proprietors are proud people who are not looking for a hand-out. They want so much to be able to trust their landlord. Absent that, they just want the comfort of knowing that their landlord will negotiate in good faith, in an open, transparent and fair-minded manner that will produce "fair and reasonable" rents for all concerned. It's not asking much, but without it they face disaster.

The members of CFV sincerely appreciate your consideration of their concerns and tribulations and respectfully request that you please pass HB 2284 extending the sunset date of Act 189 to June 30, 2015.

Thank you.

Michael Steiner

Michael Steiner Executive Director Citizens for Fair Valuation Telephone: (808) 221-5955 Email: <u>MSteiner@SteinerAssoc.com</u> Web Site: <u>www.FairValuation.org</u> Pacific Business News (Honolulu) - February 1, 2010

# PACIFIC BUSINESS NEWS

Friday, January 29, 2010

# Servco wins arbitration on HRPT rent

Pacific Business News (Honolulu) - by Janis L. Macin Pacific Business News

Servco Pacific recently won an arbitration over the rent it pays for its Mapunapuna auto dealership, and the decision may set a new standard favorable to tenants of Hawaii's largest industrial landlord.

The downturn in the economy may end up helping even more of the tenants as the sluggish commercial real estate market pushes land values down.

Servco's arbitration with Newton, Mass.-based **HRPT Properties Trust** for its 9.6-acre lot on Pukoloa Street in Mapunapuna was confirmed in court this month for \$5.26 per square foot annual rent, or \$2.2 million per year, for 10 years.

Servco, the state's largest auto dealer, had been paying \$2.95 a square foot. HRPT wanted Servco to pay \$7 plus 4 percent increases each year for 10 years, putting Servco's annual rent at \$4.2 million by the end of the lease.

Citizens for Fair Valuation — a group of about 20 Mapunapuna businesses, including Servco, that formed several years ago to oppose HRPT's effort to dramatically raise rents — sees the award as a victory, since the amount was far less than what the landlord originally sought.

But HRPT spokesman Tim Bonang noted that Servco's new rent reflects a 78 percent increase over what it had been paying.

"I think the fact that the Servco arbitration still came out at close to an 80 percent increase is where the market is right now," Bonang said. "At the end of the day, absent any legislative interference, our rental rates have been driven by the market. For better or worse that's the way the agreements have been set up."

Servco, whose executives declined an interview request from PBN, was the first tenant to complete arbitration with HRPT. The process can take as long as six months, depending on the availability of arbitrators and other experts.

At least one other company, **Hawaii Select Investments**, has gone through arbitration hearings and is waiting for the final ruling from a three-appraiser panel after receiving rent estimates from both sides' appraisers.

Several other tenants, whose leases expired more than a year ago, are also seeking arbitration but their cases haven't yet begun.

Hawaii Select, which leases about an acre and a half on Sand Island from HRPT, was initially offered rent of \$7 per square foot with 3 percent annual step-ups, according to the company's attorney, Bill Byrns.

Hawaii Select's appraiser determined the annual rent should be \$4.45 per square foot, he said.

"The offer they made to my client without step-ups was \$10.25," said Byrns, who represents three other HRPT tenants waiting to go through arbitration. "Then their appraiser comes in at \$6.48, way below what their offers were."

The market may end up pushing rents down further.

A recent ground rent renegotiation in the Bougainville area of Honolulu, which is zoned for industrial mixed-use, valued the land at \$66 per square foot.

That, coupled with the award for the Servco land, which is zoned business-community - which allows for a number of different business activities - points to values for the industrial-zoned land in metro Honolulu of \$45 to \$50 per square foot, said Mark Ambard, president of Ambard & Co.

HRPT paid \$50 per square foot for 220 acres of Damon Estate land in Mapunapuna and Sand Island in 2005. It also owns about 200 acres at Campbell Industrial Park.

Ambard expects prices for the industrial market on Oahu to drift downward over the next year and then remain flat for another three to four years.

"It's purely a reflection of the economy," Ambard said. "I don't see any turnaround until 2014 at the soonest."

More than a dozen businesses going through arbitration had rent resets due on Jan. 1, 2009, or Jan. 1, 2010. A majority of the leases in Mapunapuna come up for reset in 2012.

Even if land values decline between now and then, tenants that reject HRPT's initial offers also will be forced to go through arbitration,

which can cost anywhere from \$30,000 to \$100,000, according to Byrns.

It's one of the reasons that Citizens for Fair Valuation has gone back to the Legislature this year seeking to extend a law that sets the terms of the negotiations between HRPT and its tenants.

The law requires the renegotiations to be "fair and reasonable," a term that was included in the tenants' leases under the former owner, the **Estate of Samuel Mills Damon**. The law was to expire on June 30, but companion bills introduced in the House and Senate would push that date to June 30, 2015.

HRPT last summer filed a federal lawsuit against the state, claiming the law violates the U.S. Constitution. In December, U.S. District Judge Susan Oki Mollway ordered both sides to conduct additional discovery and file additional briefs on the issues.

"If everyone seems satisfied with this process, why is there a need for legislation?" Bonang said. "They're looking to extend what we believe to be an unconstitutional law."

jmagin@bizjournals.com | 955-8041

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#### EXECUTIVE CHAMBERS

#### HONOLULU

LINDA LINGLE GOVERNOR

July 16, 2009

The Honorable Colleen Hanabusa, President and Members of the Senate Twenty-Fifth State Legislature State Capitol, Room 409 Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: Senate Bill No. 764 SD2 HD2 CD1

On July 15, 2009, Senate Bill No. 764, entitled "A Bill for an Act Relating to Real Property" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to change the process for renegotiating the amount of rent during the term of an existing commercial or industrial lease, unless expressly stated otherwise in the lease. The bill requires the term "fair and reasonable" annual rent of any lease of commercial or industrial leasehold property to be construed as fair and reasonable to both the lessor and the lessee to the lease, and to consider other relevant circumstances relating to the lease, such as surface characteristics of the property. If the lessee is a master lessee, these requirements shall apply if the master lessee agrees to act comparably when determining the renegotiated sublease rental amount charged to a sublessee.

This measure appears to be targeted at a single landowner for the benefit of its lessees. The ability to freely negotiate contracts without government intrusion is essential to a fair and open marketplace and a principle that I support.

However, this bill addresses a case where the free market between lessor and lessee is not functioning. We have seen a concentration of land ownership of urban commercial and industrial properties become centered in a few large firms that distort market forces and leave businesses in Hawaii with little recourse.

It is unfortunate that the actions of a single land owner have created the situation where the Legislature has intervened between the parties, albeit only for a single year.

This bill impacts the renegotiations of lease rent by interjecting, unless otherwise stated in the lease, its construction of "fair and reasonable annual rent" in commercial or industrial

The Honorable Colleen Hanabusa, President and Members of the Senate Page 2

leases. In addition, this bill requires master lessees to limit any sublease rental amount negotiated or renewed during the period the lease rent is renegotiated with the master lessee to the lesser of a) the "fair and reasonable" amount determined according to the aforementioned requirements or b) the rental amount as calculated under the renegotiation or renewal provisions of the sublease.

For the foregoing reasons, I allowed Senate Bill No. 764 to become law as Act 189, effective July 15, 2009, without my signature.

Sincerely,

LINDA LINGLE

733 Bishop Street, Suite 18 Honolulu, HI 96813	Makai Tower 820 RMR HLC tel: (808) 599-5800 fax: (808) 599-5806 Reit Management & Research LLC PROPERTY MANAGEMENT
	September 2009
VIA E MATLAN	D CERTIFIED MAIL,
	PT REQUESTED
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Re	
The follow lease rent negotiation	ving are the terms upon Properties LLC would offer to continue ons with
Lessor:	Trust.
Lessee:	
Premises:	Honolulu, Hawaii,
A The I	
Annual Rental Rate:	For the period beginning
	(10 years), ber square foot of land, increasing annually on each
	(10 years), the per square foot of land, increasing annually on each anniversary date <b>sector</b> . Rent will be payable monthly, in advance.
	(10 years), ber square foot of land, increasing annually on each

age Two

Other Terms and Conditions:

All other terms and conditions shall remain as set forth in the Lease.

It is understood by both Lessor and Lessee that this proposal is non-binding and is subject o changes, modification and/or withdrawal at any time without notice. There shall be no binding greement between Lessor and Lessee unless and until a mutually acceptable, final lease mendment has been executed and delivered by both Lessor and Lessee. In any event, the terms of this letter will <u>expire at 2:00 PM (HST)</u> Coctober 2009.

If the foregoing terms and conditions are acceptable, please sign below and return to me ia fax to (808) 599-5806 or email to jyokota@reitmr.com by 2:00 PM (HST)

As you may be aware, Section (B) of the Lease provides that if the Lessor and essee fail to agree on the rent payable, such rent shall be determined by three impartial real state appraisers. If your signed acceptance is not received as set forth above, Lessor will initiate he appraisal process.

If you have any questions, please contact me at (808) 599-5800. I look forward to earing from you.

Sincerely,

Jan S. Vokota Vice President - Pacific Region

igreed and Accepted:

iy:

Name: Its:

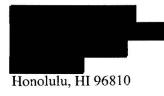
Date:

400 Centre Street, Newton, MA 02458-2076



tel: (617) 332-3990 fax: 617-332-2261

April 9, 2009



Dear

I am the Chief Operating Officer and Senior Vice President of HRPT Properties Trust, and I would like to share with you some recent developments regarding HRPT and the Hawaii office of its affiliate and property manager Reit Management & Research LLC (RMR).

We have made a change in leadership, and for the interim Chris Woodard will be Acting Vice President in charge of our Hawaii office. Chris has been with HRPT and its affiliates for five years working in our headquarters office outside Boston and is highly respected throughout our organization. He has been on the ground in Honolulu for the past 10 weeks and is committed to remain in place until we fill the Hawaii Vice President role on a permanent basis. Chris can be reached by calling 808-599-5800 or via email at cwoodard@reitmr.com.

Our Honolulu office is fully committed to meeting its goal of responding to any tenant inquiry within one business day, and we are in the process of increasing our staffing levels to achieve this. I would remind you that we have an emergency hotline for property management issues (808-945-1185). Resolution of your request might take longer than one business day; however, you will receive a timely return call or email to let you know that your issue is being addressed. In addition, if you have questions regarding any upcoming rent re-opening, I encourage you to call our Honolulu office to schedule a meeting.

I also would like to inform you of two changes in our policies regarding rent negotiations and comparable market data. We no longer require tenants or potential tenants in our Oahu industrial market to sign confidentiality agreements before entering negotiations for rent re-sets, lease renewals or new

A Maryland Real Estate Trust with transferable shares of beneficial interest listed on the New York Stock Exchange. No shareholder, Trustee or officer is personally liable for any act or obligation of the Trust. leases. In addition, going forward, we will release transaction comparables to commercial real estate brokers and appraisers upon request, when contractually permitted. It is our hope that these changes will help tenants make better informed decisions and result in a smoother renegotiation process for all parties.

For our James Campbell Industrial Park tenants, we will be opening an onsite office and establishing regular business hours there. We will notify you when the office opens and of its hours of operations in a subsequent letter.

We remain committed to supporting our Hawaii tenants and thank you for the opportunity to strengthen our relationship.

Best regards,

Dail M. Lepore

David M. Lepore Senior Vice President and Chief Operating Officer HRPT Properties Trust

# 1440 NEW YORK AVENUE, N.W. WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000 FAX: (202) 393-5760 www.skadden.com FIRM/AFFILIATE OFFICES BOSTON CHICAGO HOUSTON LOS ANGELES NEW YORK PALO ALTO WILMINGTON BEIJING BRUSSELS FRANKFURT HONG KONG MOSCOW MUNICH PARIS SÃO PAULO SHANGHAI SYDNEY TOKYO TORONTO VIENNA

August 25, 2009

Mr. Michael Steiner Citizens for Fair Valuation 841 Bishop Street, Suite 1500 Honolulu, HI 96813

## **HRPT Properties Trust**

Dear Mr. Steiner:

HRPT Properties Trust has forwarded your letter of August 10, 2009 to us. I also understand that you have contacted Jan Yokota to schedule a meeting.

As you know, issues related to HRPT's leases are currently the subject of litigation. As a result, please direct any further inquiries to me.

Thank you in advance for your cooperation.

Very truly yours,

cc: Ms. Jan Yokota Mr. David M. Lepore

DIRECT DIAL 12-37 | -7040 DIRECT FAX 12-65 | -8340 EMAIL ADDRESS FF.SLOAN@SKADDEN.COM

#### UNAUDEN, ARTO, ULATE, MEAGHER & FLUM LLP

#### 1440 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000 FAX: (202) 393-5760 www.skadden.com FIRM/AFFILIATE OFFICES BOSTON CHICAGO HOUSTON LOS ANGELES NEW YORK PALO ALTO SAN FRANCISCO WILMINGTON BELING BRUSSELS FRANKFURT HONG KONG LONDON MOSCOW MUNICH PARIS SÃO PAULO SHANGHAL SINGAPORE SYDNEY TORONTO VIENNA

Mr. Michael Steiner Citizens for Fair Valuation 841 Bishop Street, Suite 1500 Honolulu, HI 96813

Dear Mr. Steiner:

I have your letter of September 2.

HRPT does not consider you to be a legitimate representative of its tenants.

HRPT continues to engage in numerous rent negotiations with its tenants. If you attempt to interfere in those negotiations or if you continue your campaign of harassing HRPT and its representatives, you should expect that HRPT will respond appropriately.

If any representatives of HRPT, including Ms. Yokota and me, do not respond to any further communications you make, please understand that our silence does not imply agreement to anything you write or say.

ours truly. U. Som

Clifford M. Sloan

September 9, 2009

cc: Ms. Jan Yokota Mr. David Lepore

DIRECT DIAL 2-371-7040 DIRECT FAX 2-661-8340 EMAIL ADDRESS FF. SLOAN@SKADDEN.COM Of Counsel: NING LILLY & JONES FIRST CIRCUIT COURT STALE OF HAWAN FILED

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Honolulu, HI 96813	AD2			GLERN	r.
Telephone: (808) 528-1100 Mtn to CONFIRM award.doc					
Attorneys for Claimant MASTERS PROPERTIES, I	LC				
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SERVCO PACIFIC INC., a	Hawaii	Ś			
Corporation,		ý	HEARING:	-	
•		Ś	DATE: Jan.	14,2010	
Respondent.		Ś	TIME: PLOO A	MGSC	-
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### MASTERS PROPERTIES LLC'S MOTION TO CONFIRM ARBITRATION AWARD

MASTERS PROPERTIES LLC ("Masters"), by and through undersigned counsel Ning Lilly & Jones, and pursuant to Hawaii Revised Statutes § 658A-22, hereby applies to this Court for confirmation of the Decision and Award of the Arbitrators issued and dated November 19, 2009 ("Arbitration Award"). A true and correct copy of the Arbitration Award is attached hereto as Exhibit "A".

RECEIVED NOV 3 0 2009

Masters is at all times relevant hereto, a Maryland Limited Liability Company doing business in the State of Hawaii. Respondent SERVCO PACIFIC INC. ("Servco") is at all times relevant hereto, a Hawaii corporation. Venue is proper in this Court pursuant to Section 658A-22, Hawaii Revised Statues.

Masters is the Lessor and Servco is the Lessee under the Lease dated October 2, 1981 for Lot 1083 in Mapunapuna. TMK: (1) 1-007-031, consisting of 418,502 sq. feet, whose address is 2810 Pukoloa Street, Honolulu, HI. The Lease's term is for 50 years from February 1, 1979 to January 31, 2029 with fixed rent for the first 10 years, reopening every 10 years thereafter beginning February 1, 1989.

The reopening that was the subject of the instant arbitration, is for the fourth 10-year period from February 1, 2009 to January 31, 2019. Under the Lease, in case the parties fail to agree on the net annual rent payable for any rental period at least 90 days before the commencement of such period, "said rent shall be such fair and reasonable annual rent for the demised land (exclusive of buildings) as shall be determined by three impartial real estate appraisers[.]" Lease, ¶ B, p.12.

No agreement on the rent was reached for the fourth period. Therefore, pursuant to the terms of the Lease, on February 17, 2009 Servco appointed Jan R. Medusky as its appraiser and on February 26, 2009 Masters appointed James Hallstrom as its appraiser. Thereafter, Mr. Medusky and Mr. Hallstrom appointed Ted Yamamura. A true and correct copy of the Submission Agreement is attached hereto as Exhibit "B". After 5 days of arbitration hearings, from October 12 through 16, 2009, and the submission of written briefs, the Arbitration Panel issued its Arbitration Award attached hereto as Exhibit "A". To date, there has been no

2

modification or correction to the Arbitration Award pursuant to § 658A-20 or 658A-24, nor has it been vacated pursuant to §658A-23. See Declaration of Valerie M. Kato.

WHEREFORE, Masters respectfully requests that:

- The Court enter an Order and Judgment confirming the Arbitration Award; and
- The Court retain jurisdiction to enforce the terms of its Order confirming the Arbitration Award.

Dated: Honolulu, Hawaii, November 30, 2009

KE-CHING NING VALERIE M. KATO Attorneys for Claimant MASTERS PROPERTIES LLC

# IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

# STATE OF HAWAII

In the Matter of the Arbitration Between	) S.P. NO ) (Special Proceeding)
MASTERS PROPERTIES LLC, a Maryland Company,	) ) DECLARATION OF VALERIE M. KATO
Claimant,	)
VS.	)
SERVCO PACIFIC INC., a Hawaii Corporation,	)
Respondent.	) )
	)

#### DECLARATION OF VALERIE M. KATO

I, VALERIE M. KATO, declare:

1. I have personal knowledge of facts stated in this Declaration and if called as a witness in this action, I could and would testify to all matters set forth herein of my own knowledge.

2. I am one of the attorneys for MASTERS PROPERTIES LLC, Claimant in the above-captioned case.

Attached hereto as Exhibit "A" is a true and correct copy of the Decision and
Award of the Arbitrators dated November 19, 2009 which was received by counsel on November
23, 2009.

4. Attached hereto as Exhibit "B" is a true and correct copy of the executed Statement and Agreement of Procedures, Scheduling and Fees dated July 21, 2009.

5. The arbitration hearing was held from October 12 through 16, 2009. To date, there has been no modification or correction to the Arbitration Award attached as Exhibit "A" pursuant to § 658A-20 or 658A-24, nor has it been vacated pursuant to §658A-23.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of November, 2009, in Honolulu, Hawaii.

2

November 19, 2009

Ke-ching Ning, Esquire <u>ning@nljlaw.com</u> Valerie M. Kato, Esquire <u>vkato@nljlaw.com</u> Ning, Lilly & Jones 707 Richard Street Suite 700 Honolulu, Hawaii 96813

Bruce Lamon, Esquire blamon@goodsill.com Vincent A. Piekarski, Esquire vpiekarski@goodsill.com Goodsill Anderson Quinn & Stifel Alii Place, Suite 1800 1099 Alakea Street Honolulu, Hawaii 96813

Re: DECISION AND AWARD OF THE ARBITRATORS Ground Rent Determination in Accordance with the Terms of the Lease Dated October 2, 1981, by and between the Trustees Under the Will and of the Estate of Samuel M. Damon, Deceased (Lessor), and Servco Pacific Inc. (Lessee), for the Premises identified as Lot 1083, TMK (1) 1-1-7-31, 2810 Pukoloa Street, Honolulu, Oahu, Hawaii

Dear Ms. Ning, Ms. Kato, Mr. Lamon and Mr. Piekarski:

The current Lessor under the Lease is Masters Properties, LLC, and the current Lessee is Servco Pacific Inc. The Lease demises the premises identified as Lot 1083, 2810 Pukoloa Street, Honolulu, Hawaii, Tax Map Key (1) 1-1-07:31, and more particularly described in Exhibit "A" of the Lease, and contains 418,502 square feet of land area.

The Lease provides for the reopening and redetermination of the fair and reasonable annual rent for the demised land (exclusive of buildings) for the 10-year period commencing on February 1, 2009.

James E. Hallstrom, Jr., MAI, CRE, the appraiser appointed by the Lessor, Jan R. Medusky, MAI, CRE, the appraiser appointed by the Lessee, and Ted Yamamura, SRA, the appraiser appointed by Messrs. Hallstrom and Medusky, have been duly constituted to perform the function of a board of arbitration and serve as "Arbitrators" in determining the fair and reasonable annual rent of the demised premises.

The Arbitrators have reviewed the Lease, conducted procedural meetings with the agents for the Lessor and Lessee, inspected the demised Premises, conducted a hearing, considered all documents and other written communications submitted by or on behalf of the Lessor and Lessee, analyzed relevant market and other data, and discussed and shared their analyses and findings.

" EXHIBIT " A

Ke-ching Ning, Esquire Valerie M. Kato, Esquire Bruce Lamon, Esquire Vincent A. Piekarski, Esquire November 19, 2009 Page two

NOW THEREFORE, In accordance with the Lease, the submission agreement and applicable laws of the State of Hawaii, the Arbitrators have unanimously determined the fair and reasonable annual rent of the demised premises, as of February 1, 2009, to be:

# TWO MILLION TWO HUNDRED THOUSAND DOLLARS (\$2,200,000)

IN WITNESS WHEREOF, the undersigned Arbitrators have executed these presents as of the 19<sup>st</sup> day of November 2009.

lames Hallstrom R. Medusky, MAI,

Ted Yamamura, SRA, R/W-AC

STATE OF HAWAII ) ) SS. CITY AND COUNTY OF HONOLULU )

On November 19, 2009 before me personally appeared James E. Hallstrom, Jr., Mr. Jan R. Medusky, and Mr. Ted Yamamura, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

THOMAS Jon Thomas Hunter, Ŕ Circuit Doc Date: ame: Jon Thomas Hunter # Pages: 2 Doc. Description: Notary Public, State of Hawaii RASF L QR 24 commission expires: 6 January 2011 1 tary Signature Date NOTARY CERTIFICATION

July 21, 2009

Ke-ching Ning, Esquire <u>ning@nljlaw.com</u> Valerie M. Kato, Esquire <u>vkato@nljlaw.com</u> Ning, Lilly & Jones 707 Richard Street Suite 700 Honolulu, Hawaji 96813

Bruce Lamon, Esquire blamon@goodsill.com Vincent A. Piekarski, Esquire vpiekarski@goodsill.com Goodsill Anderson Quinn & Stifel Alii Place, Suite 1800 1099 Alakea Street Honolulu, Hawaii 96813

#### Re: STATEMENT AND AGREEMENT OF PROCEDURES, SCHEDULING AND FEES RELATING TO: Ground Rent Proceeding in Accordance with the Terms of the Lease Dated October 2, 1981, by and between the Trustees Under the Will and of the Estate of Samuel M. Damon, Deceased (Lessor), and Servco Pacific Inc. (Lessee), for the Premises identified as Lot 1083, TMK (1) 1-1-7-31, 2810 Pukoloa Street, Honolulu, Oahu, Hawaii

Dear Ms. Ning, Ms. Kato, Mr. Lamon and Mr. Piekarski:

#### **OVERVIEW**

The current Lessor under the Lease is Masters Properties, LLC, and the current Lessee is Servco Pacific Inc. We understand that the Lessor and the Lessee have been unable to reach agreement as to the fair and reasonable annual rent for the demised land (exclusive of buildings) "Premises" as it relates to the establishment of the annual rent for the 10-year period commencing on February 1, 2009, as stipulated in the Lease. Lessee has therefore invoked the appraisal provision of the Lease and both Lessor and Lessee mutually agree that the matter is to be determined by arbitration according to the Lease.

In accordance with the procedure for appointment of arbitrators as specified in the Lease, James E. Hallstrom, Jr., MAI, CRE, has been appointed by the Lessor, Jan R. Medusky, MAI, CRE, has been appointed by the Lessee; and Ted Yamamura, SRA, has been appointed by Messrs. Hallstrom and Medusky (Messrs. Hallstrom, Medusky, and Yamamura are collectively referred to as the "Panel"). Mr. Yamamura shall serve as the chairman of the Panel.

This agreement sets forth the procedures, scheduling and fees relative to this arbitration proceeding to determine the fair and reasonable annual rent for the Premises (the "Proceeding"). The Panel understands that all expenses of this Proceeding shall be borne equally between Lessor and Lessee, except that each party shall pay the fees of its own attorneys and witnesses.

EXHIBIT "B

Within this agreement, the Lessor and Lessee are collectively referred as the "Parties of Interest" and each as a "Party of Interest". The Parties of Interest and the Panel are collectively referred to as the "Parties" and each as a "Party".

**The Matter to be Determined**: The Panel is to determine the fair and reasonable annual rent for the Premises, as of February 1, 2009 (commencement date of the ten-year rent reopening period), all in accordance with the Lease. The Premises is identified as follows:

#### Lot 1083, 2810 Pukoloa Street, Honolulu, Hawaii, Tax Map Key (1) 1-1-07:31

The land area to be utilized by the Panel is as provided in Schedule "A" of the Lease. The Panel has been furnished with a copy of the Lease which contains a total of twenty (20) pages and constitute the total contract and agreement between the Parties of Interest with respect to the Premises. The Panel is informed that there are no additional documents or amendments to the Lease in effect on the date of this agreement that amend or modify the rent setting provisions of the Lease.

- **Procedures and Scheduling Conference**: An initial procedures and scheduling conference was held on Friday, June 5, 2009, in connection with this arbitration. Each of the Parties of Interest was represented at this meeting.
- Site Visit: The Panel's site visit is scheduled for October 12, 2009, and will commence at 9:00 a.m. The Parties of Interest and their authorized representatives are invited, but are not required, to be present. It is requested that the Parties of Interest give prior notice to the Panel in the event either Party of Interest decides not to attend. The Panel may question a Party of Interest or their counsel during the site visit regarding physical issues, provided, however, the other Party of Interest or their counsel shall be given the opportunity to comment on the Panel's inquiries. Further, neither Party of Interest nor their counsel shall attempt to present any valuation evidence to the Panel during the site visit.
- **Hearing**: A hearing is scheduled for October 12, 2009, immediately following the site visit, and will take place at the offices of The Hallstrom Group, Inc., located at 1003 Bishop Street, Pauahi Tower, Suite 1350 in Honolulu.
  - <u>Schedule</u>. The Panel has set aside the hours of 9:00 a.m. to 12:00 noon, and 1:30 to 5:00 p.m. for five (5) days commencing on October 12, 2009, to October 16, 2009, to conduct the Hearing. If necessary, the Hearing will be continued on October 17, 2009, under the same hours. If the Hearing is not completed on October 17, 2009, the Parties shall schedule mutually acceptable and convenient dates to continue the Hearing until completed.
  - <u>Presentation of Evidence</u>. At the Hearing, the Parties of Interest may present expert or lay witnesses for the purpose of assisting the Panel in understanding their position on the issues being considered. Each witness may be subject to cross examination by the other Party of Interest and the Panel, in that order. Re-direct examination shall be limited to matters raised in the questioning. Each Party of Interest shall have its witnesses available to testify sequentially on the scheduled date to ensure that there are no breaks in the conduct of the Hearing. No undisclosed witnesses may be called. The witness exclusion rule shall apply.
  - Order of Presentation. The Hearing shall be conducted in phases in the following order:
    - Presentation by the Lessor, including expert and lay witnesses.
    - Presentation by the Lessee, including expert and lay witnesses.

- <u>Rules of Evidence</u>. Conformance to Hawaii Rules of Evidence will not be strictly adhered to but will serve as guidance in considering the permissible scope and weight of evidence presented.
- Attendance at the Property Inspection and Hearing: Any person who is not an expert witness that has a direct interest in the arbitration may attend the property visit and hearing.
- Briefs, Expert Reports and Other Evidence: Each Party of Interest intends to submit expert reports and may elect to conduct depositions of expert witnesses.
  - <u>Exchange of Expert Reports and Witness Disclosures.</u> The Parties of Interest shall have until 4:00 p.m. on July 31, 2009, to exchange written expert reports, which may be in summary form, and witness disclosures.
  - <u>Supplemental Expert List Witness Disclosures</u>. The Parties of Interest shall have until 4:00 p.m. on August 14, 2009, to exchange supplemental written expert reports, which may be in summary form, and supplemental witness disclosures.
  - <u>Deposition of Experts.</u> The Parties of Interest shall conduct their depositions (if any) of expert witnesses during the week of August 24, 2009.
  - <u>Opening Brief</u>. The Parties of Interest shall have until 4:00 pm on October 5, 2009, to submit an Opening Brief to the Panel, and exhibits including expert reports and appraisals.
  - Post Hearing Briefs. If desired, the Parties of Interest shall each submit a post hearing brief not later than 4:00 pm on the date that is fourteen (14) days after the conclusion of the Hearing as evidenced by the close of testimony. Post hearing briefs shall be limited to issues and topics previously raised in the submissions by the Parties of Interest or at the Hearing. No new evidence shall be submitted with the post hearing briefs except as specifically authorized by the Panel.
  - <u>Copy to Other Party of Interest</u>. A copy of each submittal made to the Panel by either Party of Interest shall be served concurrently on the other Party of Interest by the same method of delivery used for the Panel.
  - <u>Requests for Additional Information</u>. From time to time during the course of the Proceeding, the Panel may seek additional facts or opinions from the Parties of Interest. Responses to such requests must be copied to the other Party of Interest.
  - Independent Research. The Panel may engage in additional independent research and analysis.
- Questions of Fact or Law: If a definitive award by the Panel requires their resolution of any legal question, or any other question which involves information that is known or conveniently available only to the Parties of Interest, the Panel will not resolve the question without first (a) advising the Parties of Interest of the issue or question and (b) allowing each of them ten (10) calendar days to deliver to the Panel a written response, and (c) duly considering the merits of each response.
- **Contact with the Parties of Interest**: The Panel will be impartial in its conduct of the Proceeding and, except as provided herein, will neither initiate nor accept any *ex parte* communication, either oral or written, to or from the Parties of Interest or their counsel.

- Notices: All notices and documents that may or are required to be given hereunder shall be in writing and shall be sent by (a) email. (b) personal delivery, (c) registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below, (d) Federal Express or other reputable courier service regularly providing evidence of delivery, or (e) confirmed facsimile transmission ("Fax") to the Fax number of such Party set forth below.
- Notices and documents shall be deemed served or given for all purposes hereunder at the time such notice, demand or request shall be delivered (as established by acknowledgment of the recipient, return receipt, or courier's proof of delivery), the Fax thereof is successfully transmitted to the recipient, or upon confirmation of receipt by the recipient (if transmitted by email). Any refusal to accept delivery of a written notice or document delivered or mailed to the addresses set forth below shall be deemed to be receipt of such notice or document for the purposes of this agreement. Any Party may change its address for notice, Fax number or email address by delivering written notice thereof to the other party in the manner set forth hereinbefore, and thereafter such party's notice address, Fax number or email address shall be the new address or Fax number.
- The addresses, Email and Fax numbers of the Parties for notices shall be as follows:

Panel Chair:	Ted Yamamura, SRA ACM Consultants, Inc. 2073 Wells Street Suite 100 Wailuku, Hawaii 96793 Telephone: (808) 270-0604 Facsimile: (808) 242-1852 Email: <u>ted@acmmaui.com</u>
Lessor:	Masters Properties, LLC c/o Ning, Lilly & Jones Ke-ching Ning, Esquire <u>ning@n]jilaw.com</u> Valerie M. Kato, Esquire <u>vkato@n]jilaw.com</u> 707 Richards Street, Suite 700 Honolulu, Hawaii 96813 Fax: (808) 531-2415
Lessor:	Servco Pacific Inc. c/o Godsill Anderson Quinn & Stifel Bruce Lamon, Esquire <u>blamon@goodsill.com</u> Vincent A. Piekarski, Esquire <u>vpiekarski@goodsill.com</u> Alii Place Suite 1800 1099 Alakea Street Honolulu, Hawaii 96813 Fax: (808) 547-5880

- **Disclosure**: Each of the arbitrators in this matter has previously submitted a letter of disclosure to the Parties of Interest. Consistent with Hawaii Revised Statutes Subsection 658A-12(b), supplemental disclosures will be made as appropriate.
- Arbitration Decision (Award): The Panel will complete the Proceeding pursuant to the Lease and the terms of this agreement and will execute, acknowledge, and serve its award in

- writing upon the Parties of Interest, as provided herein. The award shall be issued within a reasonable time but not later than forty five (45) calendar days following the close of testimony at the Hearing, or the deadline to submit post hearing briefs. In accordance with the provisions of HRS Section 658A-19, the decision and award shall be in the form of a notarized statement signed by the three arbitrators setting forth an identification of the Premises, the nature of the assignment, and the final decision. In the case of a lack of unanimity, the decision of two of the three arbitrators (majority) shall represent the findings of the Panel. The notarized statement shall be delivered personally or by registered mail to the Parties of Interest or such Parties attorney. No report will be issued, nor will the Panel be obligated to review their decision, the specific valuation methodology or methodologies or other aspects of the decision with the Parties of Interest.
- Confirmation, Vacation, Modification, or Correction of Arbitration Decision (Award): A Party of Interest will pay the reasonable fees and costs necessarily and reasonably incurred by each Panel Member in responding to discovery requests and court appearances requested by such Party of Interest if:

(1) That Party of Interest files a motion to vacate, modify, or correct the award of the Panel pursuant to Chapter 658A, Hawaii Revised Statutes, and the motion is denied; or

(2) That Party of Interest opposes a motion to confirm the award of the Panel pursuant to Chapter 658A, Hawaii Revised Statutes, and the motion is granted.

Furthermore, if any of the Panel Members shall be compelled to collect any of the foregoing expenses for fees through legal process, the responsible Party of Interest hereby agrees to pay any individual amount due on account of such collection action, including attorney's fees incurred.

In addition, if either Party of Interest files a motion, lawsuit or other proceeding against any or all of the Panel Members for any action taken by the Panel Member(s) during the Proceeding, and if such motion is denied or such proceeding is found to be without merit, the Party of Interest filing such proceeding will indemnify the Panel Member(s) against all reasonable costs and expenses, including attorney's fees, reasonably paid or incurred in connection with such proceeding.

 Non-refundable Arbitration Fees: Each Party of Interest shall pay all proper costs and expenses of such arbitration in the following manner:

For services rendered under this agreement, the fee for *each* Panel Member shall be \$30,000 which is inclusive of general excise tax, travel and expenses. The Lessor and Lessee shall each pay one-half of all costs and expenses of this Proceeding in the following manner. The fee for each Panel Member at the time of execution of this letter shall be made payable to the respective Panel Member as follows:

Party of Interest	Fee	Payee
Lessor	\$15,000.00	The Hallstrom Group, Inc.
	\$15,000.00	Medusky & Company, Inc.
	\$15,000.00	ACM Consultants, Inc.
Lessee	\$15,000.00	The Hallstrom Group, Inc.
	\$15,000.00	Medusky & Company, Inc.
	\$15,000.00	ACM Consultants, Inc.

The fee represents the Panel's estimate of its total fee for completing the Proceeding. *The checks for each Panel Member should be mailed to the Panel Chair at the address provided herein.* It should be noted that the total fee is due and payable upon acceptance and execution of this agreement.

In the event any additional fees become due as a result of unusual or unforeseen circumstances that may arise during the course of the Proceeding, the Parties of Interest will be notified as soon as the same is determined and shall determine whether additional fees should be incurred prior to incurring said fees. The Panel will not be paid such additional fees without prior agreement by the Parties of Interest. The foregoing does not include any allowances for significant out-of-pocket costs, such as outside professional fees, incurred after the Parties of Interest agree to such expenditure. *The Panel will not be obligated to proceed or continue with the Proceeding unless each Panel Member's fee is paid*.

The Panel will advise and request approval from the Parties of Interest if the Panel deems it necessary to obtain legal counsel to represent them in this proceeding to ensure that matters legal in nature are properly handled. Legal counsel fees will be borne equally by the Parties of Interest.

If the Parties of Interest should cancel the Proceeding by mutual agreement prior to submission of the appraisal reports and Opening Briefs, each Panel Member shall retain \$5,000.00 as a non-refundable fee, and shall return of the balance of the total fee remaining equally to each Party of Interest.

If the Parties of Interest should cancel the Proceeding by mutual agreement after submission of the appraisal report and Opening Briefs, non-refundable payments to the Panel Members shall be calculated as follows:

- o Each Panel Member shall retain \$10,000 as a non-refundable arbitration fee.
- Each Panel Member's hourly billing rate for this Proceeding is \$350.00. At the time of cancellation by the Parties of Interest, each Panel Member shall determine the time expended and shall calculate the remaining arbitration fee based on the Panel Member's hourly billing rate and the hours expended in excess (if any) of the number of hours reflected in the non-refundable arbitration fee. Each Panel Member shall mail to the respective Party of Interest the refundable portion of the arbitration fee.

Acceptance of these conditions and authorization for the Panel to proceed as outlined herein shall be evidenced by delivery of a signed copy of this agreement together with the requested fees to the Panel Chair at the address provided herein. A signed copy should concurrently be sent to the other Party of Interest. It is understood that this agreement may be executed in counterparts but it will have no force or effect unless and until executed by each Panel Member and authorized representatives of the Lessor and Lessee. The Parties of Interest and the Panel will have each executed at least one but not necessarily the same counterparts.

[signatures appear on the following page]

James E. Hallstrom Jr., MAI, CRE

Jak R. Medusky, MAI, CRE

7 Ted Yamamura, SRA

Panel Chair

#### APPROVED AND ACCEPTED:

Lessor:

Masters Properties, LLC

Ву Name: David M. epore Title:

# Senior Vice President

Servco Pacific Inc.

Lessee:

By Name: Earol K. Lam Title: Senior Vice-President

APPROVED AS TO FORM:

Ke-Ching Ning, Esquire attorney for Lessor

Bruce Lamon, Esquire attorney for Lessee

James E Hallstrom Jr. M Medusky, MAI, CRE

7 Jed Yamamura, SRA

Panel Chair

#### APPROVED AND ACCEPTED:

Lessor:

Masters Properties, LLC

By \_\_\_\_\_ Name: Title:

Servco Pacific Inc.

Lessee:

By

Name: Carol K. Lam Title: Senior Vice-President

APPROVED AS TO FORM:

Ke-Ching Ning, Esquire attorney for Lessor

Bruce Lamon, Esquire attorney for Lessee

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# Summary of Scheduled Events and Deadlines

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Event	Date	Time
Exchange of Written Expert Reports, and Witness Disclosures	July 31, 2009	4:00 PM
Supplemental Written Expert Reports and Witness Disclosures	August 14, 2009	4:00 PM
Expert Witness Depositions	Week of August 24, 2009	
Pre-Hearing Brief, and Exhibits Including Expert Reports and Appraisals due to Panel	October 5, 2009	4:00 PM
Property Inspection	October 12, 2009	9:00 AM
Hearing	Week of October 12, 2009 (October 17, 2009 – Spillover Day)	Immediately after property inspection at office of the Hallstrom Appraisal Group, Inc.
Submission of Post Hearing Briefs	14 days after conclusion of the Hearing	4:00 PM
Arbitration Decision	45 days after conclusion of the hearing or deadline to submit post hearing briefs.	

## IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

## STATE OF HAWAII

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In the Matter of the Arbitration Between		
MASTERS PROPERTIES LLC, a Maryland Company,		
Claimant,		
VS.		
SERVCO PACIFIC INC., a Hawaii Corporation,		

) S.P. NO. (Special Proceeding)

> NOTICE OF HEARING AND CERTIFICATE OF SERVICE

Respondent.

#### NOTICE OF HEARING

TO: VINCENT PIEKARSKI **BRUCE LAMON** Goodsill Anderson Quinn & Stifel Alii Place, Suite 1800 1099 Alakea Street Honolulu, Hawaii 96813 Attorneys for Respondent

PLEASE TAKE NOTICE that the foregoing motion will come on for hearing before the ROM A. TRADER in his her courtroom in the Kaahumanu Hale, 777 Honorable Punchbowl Street, Honolulu, Hawaii 96813, on 1-14-10 at 8:30 A.m. or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawaii, November 20, 2009.

**KE-CHING NING** VALERIE M. KATO Attorneys for Claimant MASTERS PROPERTIES LLC

# CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document will be duly served via U.S. MAIL

and FACSIMILE upon following party at their last known addresses on

11/30/09

VINCENT PIEKARSKI BRUCE LAMON Goodsill Anderson Quinn & Stifel Alii Place, Suite 1800 1099 Alakea Street Honolulu, Hawaii 96813 Attorneys for Respondent

DATED: Honolulu, Hawaii, November 30, 2009.

KE-CHING NING VALERIE M. KATO Attorneys for Claimant MASTERS PROPERTIES LLC

# JAMES W. Y. WONG

3737 Manoa Road • Honolulu, Hawaii 96822 • (808)946-2966 • Fax: (808)943-3140

January 29, 2010

# VIA EMAIL EBMtestimony@Capitol.hawaii.gov

Honorable Representative Angus L. K. McKelvey, Chair Honorable Representative Isaac W. Choy, Vice Chair Members of Committee on Economic Revitalization, Business, & Military Affairs Committee on Economic Revitalization, Business, & Military Affairs

RE: House Bill HB2284

Dear Honorable Chair McKelvey and Honorable Vice Chair Choy, and Members of the Committee on Economic Revitalization, Business, & Military Affairs:

I support passage of House Bill HB2284 which is a bill to extend Act 189. The purpose of the Act was to help stabilize our economy by addressing some of the vague provisions of existing commercial and industrial leases by clarifying provisions in such leases without substantial impact of the economic benefit to the owners or impact their ownership of the land, without impairing their lease contracts or without taking any property rights without due process of law. In 2009 Senate (SB764) which preceded Act 189 was passed by both House and Senate and the governor allowed it to become law.

As a lessee of commercial real estate, the bill if passed would allow Act 189 to continue which would provide that fair and reasonable rents would be provided for leases that are up for renegotiation, at a time when our entire economy is gasping for survival.

The issues brought before the legislature during the last session have only worsened. However, extending Act 189 by the passing of HB2284 will help the welfare of the Hawaii community and businesses and to stabilize the rents lessors charge and lessees pay.

The leasehold properties for which I am or was a ground lessee includes King University Plaza, Moiliili Plaza, University Plaza, Hale Anue, Waiakamilo Shopping Center, Waialae Plaza, Central Plaza, Waipahu Shopping Plaza, Kapolei Medical Park, Kailua Post Office, Windward Town & Country Plaza Phase 1 and 2, Windward Shopping Center (former Kailua Daiei property), Kapalama Shopping Center, and Kapalama Industrial leases.

I urge your approving House Bill HB2284

Aloha,

James W y. Wmg y James W. Y. Wong

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# VIA E-MAIL <u>EBMtestimony@Capitol.hawaii.gov</u>

January 29, 2010

Honorable Representative Angus L. K. McKelvey, Chair Honorable Representative Isaac W. Choy, Vice Chair Members of Committee on Economic Revitalization, Business, & Military Affairs Committee on Economic Revitalization, Business, & Military Affairs

RE: House Bill HB2284

Dear Honorable Chair McKelvey and Honorable Vice Chair Choy and Members of the Committee on Economic Revitalization, Business, Military Affairs:

I support the passage of House Bill HB2284 which is a bill to extend Act 189. My employer is a lessee and this legislation is important to ensure the viability of his business. Without his business operation, I may be unemployed. Extending Act 189 by the passing of HB2284 will help the Hawaii economy and to help me to retain my job.

Please approve House Bill HB2284

Aloha,

Print Name ROSALINO HOORE	Signature Rosalind Moore	Address 3358 ALOHEA AVE. HON., HI 96816
MISTA TATAS	Mon	PO BOX 25843 HON 96825
Coken Howard	Citer Howard	439 Opinitao Pl. Hon 96825
William Penaroza	Willim em_	91-522 Machaka Pl. Ewa, HI 96706 1044 124 AVIMU. Hm. H. 96816
Gail Sugita	Aun myn	1044 124 prenue. Um. U. 96816
JUNE ALLINA	June aking	98-379 Pono Strut Alex, Hi 96701
for bee	Loui Ree	206 been Avenue, Hundulu 26816

From: Sent: To: Cc: Subject: James McCully [jwmccully54@gmail.com] Sunday, January 31, 2010 7:22 PM EBMtestimony Bob Herkes HB 2284 Testimony

Regarding HB 2284

Aloha Rep. McKelvey

I fully support the extension of Act 189 through the passage of House Bill 2284, with the intent to support the small business owners and Lessee's that are affected by this Act. This attempt to encourage proper implementation of the Lease between Lessor and Lessee is a small step in addressing the very dysfunctional commercial leasehold lands problem in our state of Hawaii, particularly on the island of Oahu. I say this as a Lessee of nearby Industrially zoned land that is currently beginning renegotiation of lease rents for the next 10 years, and the Lessor (KSBE) has asked for a 1,700% increase in Ground Rent!!! This will bankrupt my investment if they succeed in gaining this increase. While I know that HB 2284is unique to the Lessees of a nearby area I believe that it is important to address the problems of commercial leases throughout the state whenever we can. With the current economic issues facing our State this is such a time and it is reasonable for the Legislature to intervene in matters such as this.

I have read that more than 85% of all Industrial and Commercially zoned lands are controlled by 7 large landowners, and HRPT is one of them. They have taken advantage of this stranglehold thorough ever increasing prices of the small amount of land that is for sale in Fee Simple. This scarcity leads to unrealistic prices paid for the rare zoned property available for sale, and then the large landowners use this as a comparative sale when appraising the value of their lands. This is taking unfair advantage of our unique economic environment with limited lands and no alternative locations to conduct our business. Please support our economy by helping to keep small business in business.

Please pass HB 2284

Mahalo,

James McCully

Rep. Robert Herkes, Rep. Clift Tsuji, Rep. Jerry Chang

#### February 1, 2010

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 2284 Re: Relating to Real Property – **Testimony in Support** Hearing Date: Tuesday, February 2, 2010, 8:30 AM, Room 312

Dcar Representatives McKelvey, Choy and Members of the Committee:

I support passage of House Bill HB2284 which is simply written to extend the sunset of Act 189. The issues brought before the legislature during the last session have only worsened. However, extending Act 189 by the passing of HB2284 will help the welfare of the Hawaii community and businesses and to stabilize the rents lessors charge and lessees pay.

Please approve House Bill HB2284.

Aloha,

Gary John Kaha'i Hiram 1356 Akaiki Street Kailua, Hawaii 96734 808-722-1638 gary.hiram@gmail.