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## MUTUAL PLUMBING SUPPLY

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

February 9, 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: Thursday, February 11, 2010, 2:00 PM, Room 312

Dear Representatives McKelvey, Choy and Members of the Committee:

We support the passage of House Bill HB2284 which is a bill to extend Act 189. As a private lessee and as a result of the downturn of our local economy, we need Act 189 extended to help our community and our small businesses, which are the backbone of our economy.

Thank you for your support in approving House Bill HB2284.

Aloha,

Clyde and Allison Kojima, Owners  
Mutual Plumbing Supply Co., Inc.  
2812 Awaawaloa Street  
Honolulu, HI 96819  
(808)839-9076  
mutualpls@hawaiiantel.net



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918 Ahua Street, Honolulu, HI 96819 • Ph: (808) 839-7202 • Fax: (808) 839-9813 • PARTS Ph: (808) 839-7707

February 10, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**

**February 11, 2010, at 2:00 p.m., Room 325**

**Hawaii State Capitol**

**TESTIMONY IN STRONG SUPPORT OF HB2284**

**Real Property; Leasehold; Lease Rent Renegotiation**

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

I strongly support HB 2284 and respectfully request that your committee extend the life of Act 189. My name is Phillip J. Silich. I own Bacon-Universal Co., Inc., which is located in the Mapunapuna area, and employ approximately 60 people (7 of whom have been with the company in excess of 30 years service)

Last session your Committee passed SB764 and the Governor allowed Act 189 to become law without her signature. Act 189 was given a one year sunset in order to provide the lessor, HRPT, ample time to improve their corporate citizenship and to provide lessees rents that are "fair and reasonable" as is required under the existing leases.

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. Indeed, Jan Yokota of HRPT has sent letters to lessees that require us to waive our rights under the existing law (Act 189) now and forever before making a binding offer. Is this fair? Is this reasonable?

The other particularly discriminating tactic being employed by Jan Yokota on behalf of H.R.P.T. is to force the tenants into acquiescing to annual percentage compounded increases, which are not incorporated nor provided for in the existing leases, and at no stage when the lands were owned by the Damon Trust ever contemplated.

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, bully and force lessees into costly arbitrations proceedings while ignoring the arbitration results achieved by others. These actions seem to be driven by simple greed, with no thought or concern for the detrimental impact on Hawaiian small businesses and their employees.

Passage of HB2284 will extend Act 189 and hopefully remind the landowner to negotiate terms based on the realities of the current and foreseeable future in Hawaii's 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. Thank you.

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

[www.baconuniversal.com](http://www.baconuniversal.com)

**PARTS:** PH: (808) 839-7707 FAX: (808) 839-7351 **RENTAL:** FAX: (808) 839-0775

**SALES:** FAX: (808) 834-8110 **SERVICE:** FAX: (808) 833-3279



February 10, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**

**February 11, 2010, at 2:00 p.m., Room 325**

**Hawaii State Capitol**

**TESTIMONY IN STRONG SUPPORT OF HB2284**

**Real Property; Leasehold; Lease Rent Renegotiation**

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

I support passage of House Bill HB2284 which will 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.

The issues brought before the legislature during the last session have only worsened. HRPT's corporate policies toward rents have skyrocketed in spite of a failing economy. HRPT has chosen to ignore a \$5.26 flat rate arbitration award and continues to demand rents of \$7.00 plus 3% or \$% per annum increases. This is simply price gouging.

Last session you approved SB764 which became Act 189. Please, stay your position by passing HB2284 and extend the life of Act 189. You had Hawaii's best interest at heart last year, and now additional fortitude is required to restate your position.

Act 189 does not change the terms of the leases. Act 189 merely says that when a long-term ground leases calls for "fair and reasonable rents," that those rates be fair and reasonable to both parties.

I respectfully and strongly request that you approve House Bill HB2284.

Aloha,

Patricia A. Sand  
Financial Analyst  
Bacon-Universal Company, Inc.

918 Ahua Street  
Honolulu, Hawaii 96819  
(808) 792-2413  
psand@baconuniversal.com

February 10, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**

**February 11, 2010, at 2:00 p.m., Room 325**

**Hawaii State Capitol**

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The issues brought before the legislature during the last session have only worsened. HRPT's corporate policies toward rents have skyrocketed in spite of a failing economy. HRPT has chosen to ignore a \$5.26 flat rate arbitration award and continues to demand rents of \$7.00 plus 3% or \$% per annum increases. This is simply price gouging.

Last session you approved SB764 which became Act 189. Please, stay your position by passing HB2284 and extend the life of Act 189. You had Hawaii's best interest at heart last year, and now additional fortitude is required to restate your position.

Act 189 does not change the terms of the leases. Act 189 merely says that when a long-term ground leases calls for "fair and reasonable rents," that those rates be fair and reasonable to both parties.

I respectfully and strongly request that you approve House Bill HB2284.

Aloha,

Arlene Watanabe  
Administrative Coordinator  
918 Ahua Street  
Honolulu, HI 96819  
808-839-7202  
awatanabe@baconuniversal.com



## Hawaii Select Investments Inc.

February 10, 2010

### TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

February 11, 2010, at 2:00 p.m., Room 325, Hawaii State Capitol

### TESTIMONY IN SUPPORT OF HB2284; Real Property; Leasehold Rent Renegotiation

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

My name is Bob Dewitz, I have lived and worked in Hawaii since the late 70's, and am the owner of Hawaii Select Investments which, among other things, owns American Electric Co; a unionized electrical contractor with about 200 employees. I want to speak to you about the economic "Strip Mining" that I believe is occurring in Hawaii. Strip mining, as you know, is when private firms strip out all the economic value of a locality and leave behind a toxic, unproductive wasteland for the local inhabitant – and their government – to deal with. In my opinion, that is essentially what is happening with respect to industrial leased property on Oahu.

Last session your Committee passed SB764 and the Governor allowed Act 189 to become law without her signature. This law sought to bring some equity and fairness to the industrial lessor/lessee relationship. I was at the hearings where the Lessor, HRPT, pledged to be more open and fair in their dealing with the lessees of industrial property on Oahu. Having just finished several days of very difficult – and very costly - arbitration with HRPT with regard to my own ground lease I can attest that they only reluctantly put forth a company representative to speak to their leasing practices when the Panel demanded it. I can attest that they withheld information about the rent deals they have made until the arbitration panel demanded it. I can attest that when that information did become available to the panel it showed numerous instances where HRPT had been able to get lessees to agree to annual rent increases when the existing leases only called for increases every 10 years. I can attest that they demanded rents well in excess of what an independent arbitration panel awarded in the case of SERVCO, a firm that could afford the lengthily and expensive arbitration process. I can attest that prior to going into arbitration on my own ground lease, I had "non-binding" proposals from HRPT ranging from \$10.25/ square foot/year to \$7.25/square foot with a 3% annual increase. By comparison, the SERVCO Arbitration Panel found \$5.26/ft/year with NO ANNUAL increase to be a fair rent. Rather than being forced into the unsustainable rents HRPT was demanding, I elected to invest in arbitration – but many smaller lessees simply do not have that option.

If Hawaii, and Oahu in particular, had a more open market for commercial real estate, competition would, in my opinion, ensure that HRPT could not seek or extract these exorbitant rents. However, since HRPT is the largest owner of commercial industrial property in Oahu, and a near monopolist with regard to industrial property in the urban core, I believe it has unfair power with respect to its lessees. This allows HRPT to engage in what I feel equates to financial "Strip Mining" of our local economy – draining profits from our local firms, profits that they could use to reinvest in Hawaii and hire local workers – and upstreaming those extraordinary profits to their corporate offices in Boston. With the profits stripped out of our local businesses; I believe those of us who live here are left to deal with the consequences; undercapitalized businesses, deteriorating physical plants, and no capital for investing in the future and jobs for our citizens.

Passage of HB2284 is essential to ensuring a balance of power between a monopolist landowner and those who have no choice but to be lessees of that landowner. Thank you.

Bob Dewitz  
Hawaii Select Investments/American Electric Co.  
2308 Pahounui Drive (Sand Island Access Rd)  
Honolulu, HI 96813  
Email: [bdewitz@american-electric.cc](mailto:bdewitz@american-electric.cc)

2308 Pahounui Drive, Honolulu, HI. 96819

Ph. 808-792-5701 Fx. 808-848-2700

# CITIZENS FOR FAIR VALUATION

841 Bishop Street, Suite 1500  
Honolulu, HI 96813

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

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

February 10, 2010

## TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

February 11, 2010, at 2:00 p.m., Room 325

Hawaii State Capitol

### TESTIMONY IN STRONG SUPPORT OF HB2284

#### Real Property; Leasehold; Lease Rent Renegotiation

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

My name is Michael Steiner. I am the Executive Director of Citizens for Fair Valuation ("CFV"), a non-profit coalition of businesses with long-term ground leases in the Mapunapuna, Kalihi Kai and Sand Island areas. These are the old Damon Estate lands which were purchased by HRPT, a 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.

### ACT 189

Last year, CFV testified on numerous occasions before this and other legislative committees as to the need for legislation. HRPT worked very hard to oppose the same; however, in July of 2009, the Governor allowed Act 189 to become law.

Act 189 has a one-year sunset. During this period, it was hoped that HRPT would improve its corporate citizenship such that rent resets could be fairly negotiated and reasonable terms would be set, as is called for in the lease contracts. However, this has not come to pass. After enactment of Act 189, HRPT Vice-President, Jan Yokota, sent letters to lessees advising them that they would have to waive all of their rights under Act 189, or any future bill, in order to renew their leases (see attached letter). This is just one example of how HRPT continues to bully its lessees into take-it-or-leave-it (TIOLI) agreements.

### Previous Testimony

Citizens for Fair Valuation stands on its previous testimony, which is a part of the record on this bill as well as its predecessor bill SB764. CFV believes that now, more than ever, the Legislature needs to stay its course and extend the sunset of Act 189 to again remind HRPT that they have a responsibility to the Hawaii economy and a contractual obligation to set rents that are fair and reasonable.

It is equally important to address HRPT's remarks and testimony in order to correct the record. CFV strongly believes that Act 189 does not change the terms of the existing contract; however, the legislature is well within its charter to make such laws. Indeed, as LURF's testimony points out with regard to the Hawaii Supreme Court case of Applications of Herrick & Irish, 82 Haw. 329, 922 P.2d 942 (1996), the Attorney General said,

In deciding whether a state law has violated the federal constitutional prohibition against impairments of contracts, U.S. Const., art I, § 10, cl.1, we must assay the following three criteria:

- 1) Whether the state law operated as a substantial impairment of a contractual relationship;
- 2) Whether the state law was designed to promote a significant and legitimate public purpose; and,
- 3) Whether the state law was a reasonable and narrowly-drawn means of promoting the significant and legitimate public purpose."

### **Does Act 189 substantially impair the existing contract?**

Act 189 reminds lessors with lease contracts containing a provision for "fair and reasonable" rents that these terms should apply to both parties. CFV strongly believes when lessees entered into these contracts, they took the meaning and intent of "fair and reasonable" to be just that, and not unfair or unreasonable to any given party. Why would a lessee sign a contract that allows the lessor to set rents that are unfair or unreasonable?

Act 189 also asks appraisers to "[t]ake into account any and all relevant attendant circumstances relating to the lease, including: (i) The uses and intensity of the use of the leased property during the term of the lease approved by the lessor; and (ii) The surface and subsurface characteristics of the leased property and the surrounding neighborhood on the renegotiation date."

HRPT argues that the only consideration in an appraisal should be "highest and best use." Act 189 does not preclude the consideration of highest and best, it merely asks appraisers to also consider other circumstances. For example, appraiser could consider that *every* business in Mapunapuna cannot be self-storage as that would be economically unfeasible. Appraisers may consider that soil conditions in the area will not support a building that is greater than perhaps 2 stories tall. Finally, appraisers might consider that encumbrances on the land make it nearly impossible to obtain financing to alter one's already approved business and re-tool to highest and best use.

Nothing in Act 189 creates a substantial impairment to the existing lease. The language of the bill is broad and merely reminds lessors with "fair and reasonable" terms that those terms apply to both parties.

### **Does Act 189 promote a significant and legitimate public purpose?**

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 and commercial businesses that serve Honolulu, Oahu and the rest of the state of Hawaii will have to reduce their workforce, raise consumer prices or worse, be forced to close their doors forever.

## **Is Act 189 reasonable and narrowly-drawn to promote a significant and legitimate public purpose?**

The Governor recognized the legitimate public purpose when she 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.

Act 189 was passed to remind HRPT that it has an obligation to provide "fair and reasonable" annual rents. It was hoped that within the originally one-year term, that HRPT would recognize its obligation and act accordingly. Again, HRPT has chosen instead to bully its lessees into rents that far and away exceed market rents. As such, Act 189 should be extended to again remind lessor of its contractual obligation.

## **Act 189 is targeted at a single landowner**

When HRPT Properties Trust purchased the Damon properties and leases in 2003, it chose to take title to the property under 7 separate legal entities: Master Properties LLC; Orville Properties LLC; Robin 1 Properties LLC; Tanaka Properties, LLC; LTMAC Properties; LLC, TSM Properties LLC; and, Z & A Properties LLC.

These 7 entities control roughly 10 Million square feet of space and hold the title to roughly 180 long-term ground leases. In turn, many of these ground lessees sublease space to other businesses that provide goods and services as well as employment and taxes to the people and State of Hawaii.

To my knowledge, HRPT Properties Trust is not truly a ground lessor under any of the Damon Estate leases. Instead, 7 separate entities control some 180 ground leases in the Mapunapuna area. HRPT chose to structure the deal to insulate itself from potential liability, and yet, now they cry that they are a single entity being targeted?

## **Annual percentage increases**

In recent testimony, Jan Yokota wrote, "One of the concerns expressed by testifiers is that HRPT's rent reset proposals include "step-ups" and that such "step-ups" are highly unusual." She went on to say, "Actually, Damon Estate did negotiate periodic rent step-ups in a number of their leases."

This is plainly wrong. Damon did not insist on annual percentage or fixed rate increases in their leases. In fact, the attached letter shows that Damon negotiated rents of \$3.45 for many of its tenants. Then, when Hawaii's economy dramatically declined in the 1990's, Damon offered its lessees an alternative to help them through tough times. Instead of flat \$3.45, lessees could pay \$2.45 for three years, then \$3.45 for three years, and finally \$4.45 for the remaining four years. These are not annual increases. These are not step-ups at all. HRPT is attempting to take Damon's goodwill offer to help lessees and turn it to its advantage to extort additional rents through an annual compounding increase. Given the current and foreseeable future economic condition, what drives HRPT to assume and demand businesses to pay 3% or 4% more each year for rent – especially when the leases contracts does not call for annual step-ups. This is gouging and greed at its worse. Certainly, this is not fair and reasonable to both parties.

## **Extend Act 189**

Testimony in favor of the extending of Act 189 cites example after example of why the current bill should be enacted. All attempts to deal with lessor HRPT have fallen on deaf ears. Instead, HRPT chooses to continue, and indeed amplify, its strategy to bully lessees and the state into submission in order to cart buckets of excessive profits off our islands. The legislature was correct in its actions to pass Act 189 and, CFV humbly requests that you continue to stay the course and extend Act 189 by passing this current bill.

In the pending litigation, Jon Van Dyke discussed legislative control and the separation of powers while defending Act 189. He said,

[i]n this case we have a problem, an economic problem, in our community. The legislature addressed it. There were hearings, there were hearing after hearing all last spring to deal with this issue, and people on both sides came and gave their testimony. And there were numerous versions of this bill back and forth. The version that emerged was a compromise version. It wasn't the version Citizens for Fair Valuation wanted. It wasn't the version that HRPT wanted. It was the version the legislature decided was appropriate. And HRPT was very active trying to lobby against this bill. They were then very active to try to get the governor to veto the bill. They did not succeed. Now they're in your court, trying to get you to make this bill go away. But this is a case where we should let the bill take its effect and see what it does because the court should stay its hand. The court should defer to the political branches, which have struggled.

## **Servco Arbitration Award**

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 recent 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.



With regard to the Servco award, HRPT attorney Clifford Sloan of Skaden Arps' Washington D.C. office, told the court,

First of all, it's irrelevant. It's a red herring. Second, if anything, it shows that the appraisal process works. The parties go to the appraisal process, and the appraisers make their judgment.

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 as are required to waive their rights under current law – Act 189. 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.

### **Conclusion**

The lessees with HRPT leases are hard working business people who would rather conduct their businesses, than campaign for new or extended legislation. They do not object to paying rent reasonable rents 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 the Legislature. 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.

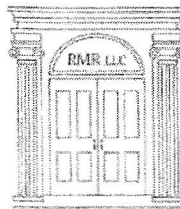
Thank you.

*Michael Steiner*

Michael Steiner  
Executive Director  
Citizens for Fair Valuation  
Telephone: (808) 221-5955  
Email: [MSteiner@SteinerAssoc.com](mailto:MSteiner@SteinerAssoc.com)  
Web Site: [www.FairValuation.org](http://www.FairValuation.org)



Property Management & Leasing  
Pacific Guardian Center - Makai Tower  
733 Bishop Street, Suite 1820  
Honolulu, HI 96813



tel: (808) 599-5800 fax: (808) 599-5806

Reit Management  
& Research LLC  
PROPERTY MANAGEMENT  
DIVISION

September 2009

**VIA E-MAIL AND CERTIFIED MAIL,**  
**RETURN RECEIPT REQUESTED**

[REDACTED]

Re:

[REDACTED]

[REDACTED]

The following are the terms upon [REDACTED] Properties LLC would offer to continue lease rent negotiations with [REDACTED]

Lessor: [REDACTED] wholly-owned subsidiary of HRPT Properties Trust.

Lessee: [REDACTED]

Premises: [REDACTED]  
Honolulu, Hawaii, [REDACTED]

Annual Rental Rate: For the period beginning [REDACTED] (10 years), [REDACTED] per square foot of land, increasing annually on each anniversary date [REDACTED]. Rent will be payable monthly, in advance. Lessee shall pay General Excise Tax (currently 4.712%) on all amounts payable to Lessor, and Lessee shall pay the Conveyance Tax imposed by the State of Hawaii with respect to the Lease.

Act 189: 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.

**Office Locations:**

Albuquerque, NM • Austin, TX • Kansas City, KS • Los Angeles, CA • Minneapolis, MN • Newton, MA • Philadelphia, PA • San Diego, CA • Syracuse, NY • Washington, DC

[REDACTED]  
Page 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 to changes, modification and/or withdrawal at any time without notice. There shall be no binding agreement between Lessor and Lessee unless and until a mutually acceptable, final lease amendment has been executed and delivered by both Lessor and Lessee. In any event, the terms of this letter will expire at 2:00 PM (HST) [REDACTED] October [REDACTED] 2009.

If the foregoing terms and conditions are acceptable, please sign below and return to me via fax to (808) 599-5806 or email to [jyokota@reitmr.com](mailto:jyokota@reitmr.com) by 2:00 PM (HST) [REDACTED]. As you may be aware, Section (B) of the Lease provides that if the Lessor and Lessee fail to agree on the rent payable, such rent shall be determined by three impartial real estate appraisers. If your signed acceptance is not received as set forth above, Lessor will initiate the appraisal process.

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

Sincerely,



Jan S. Yokota  
Vice President – Pacific Region

Agreed and Accepted:

[REDACTED]

By: \_\_\_\_\_  
Name:  
Its:  
Date:

**ESTATE OF SAMUEL MILLS DAMON**

April 11, 1997

Dear Trustees:

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

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

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

April 11, 1997  
Page 2

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

The options being made available by the Trustees follow:

**Option 1:**

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

**Option 2:**

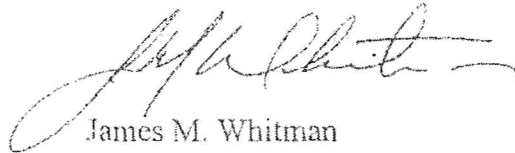
3 years @ \$2.95 per sq. ft. per annum (1/1/97 - 12/31/99)  
3 years @ \$3.15 per sq. ft. per annum (1/1/00 - 12/31/02)  
5 years @ \$3.45 per sq. ft. per annum (1/1/03 - 12/31/07)  
5 years @ \$3.95 per sq. ft. per annum (1/1/08 - 12/31/12)  
Waiver of \$2.00 in deferred rent (1/1/96 - 12/31/98)

	<u>mo</u>	<u>annual</u>
3 years @ \$2.95 per sq. ft. per annum (1/1/97 - 12/31/99)	\$ 8,775	105,309
3 years @ \$3.15 per sq. ft. per annum (1/1/00 - 12/31/02)	9,371	112,449
5 years @ \$3.45 per sq. ft. per annum (1/1/03 - 12/31/07)	10,263	123,158
5 years @ \$3.95 per sq. ft. per annum (1/1/08 - 12/31/12)	11,751	141,007

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

Very truly yours,

ESTATE OF SAMUEL MILLS DAMON



James M. Whitman  
Executive Secretary

Option No. 2, Accepted this

8 day of May 1997.

/

Lessee

# ESTATE OF SAMUEL MILLS DAMON

## MEMORANDUM

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

From: James M. Whitman  
Chief Operating Officer

Date: October 19, 1999

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

---

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

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

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

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

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

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

## PACIFIC BUSINESS NEWS

Friday, January 29, 2010

### Servco wins arbitration on HRPT rent

Pacific Business News (Honolulu) - by [Janis L. Magin](#) 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 Bongainville 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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# SERVCO PACIFIC INC.

2850 Pukoloa Street • Suite 300 • Honolulu, Hawaii 96819 • Telephone: (808) 564-1300 • Facsimile: (808) 523-3937 • [www.servco.com](http://www.servco.com)

February 10, 2010

To: The Honorable Jon Riki Karamatsu, Chair  
The Honorable Ken Ito, Vice-Chair  
and Committee Members  
House Committee on Judiciary

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

Hearing Date: Thursday, February 11, 2010, 2:00 p.m.  
Conference Room 325/State Capitol

In Support of House Bill 2284, Relating to Real Property

On behalf of Servco Pacific Inc. ("**Servco**"), I submit the following comments in support of the adoption of HB 2284 (the "**Bill**").

Servco recently completed a ground rent arbitration with HRPT for Servco's 10-acre site in Mapunapuna. The hearing lasted one-week, and both Servco and HRPT fully presented their views on rent. That arbitration panel unanimously decided on a rent of \$5.26/SF for the 10-year period beginning February 2009 *with no step ups or annual increases*.

We understand that since that arbitration award was announced, HRPT has continued to insist on *both* a first year rent that is well in excess of the Servco award *and* on 3% to 4% annual rent increases.

We support the passage of HB 2284 to remind HRPT that it needs to set rents that are fair and reasonable to both the Lessor and Lessee.

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





February 10, 2010

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

Re: HB 2284 Re: Relating to Real Property – **Testimony in Support**  
Hearing Date: Thursday, February 11, 2010, 2:00 PM, Room 325

Chair Karamatsu, Vice Chair Ito, 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.

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

Further, HRPT has the audacity to sue in Federal Court, questioning your authority and prerogative to pass legislation as you see fit.

Rather than respond to attempts at intimidation by HRPT, you should stand on your right and duty to do what you believe is right.

I respectfully request that you approve House Bill HB2284.

Thank you.

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**

**February 11, 2010, at 2:00 p.m., Room 325**

**Hawaii State Capitol**

**TESTIMONY IN STRONG SUPPORT OF HB2284**

**Real Property; Leasehold; Lease Rent Renegotiation**

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

I strongly support HB 2284 and respectfully request that your committee extend the life of Act 189. My name is Shirley Fujimoto and live in Mililani Mauka. I work for Grace Pacific Corporation which has offices and a subsidiary, GP Roadway Solutions, located in the Mapunapuna/Sand Island/Kalihi Kai area where we employ roughly 200 people.

I support passage of House Bill HB2284 which will 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.

I believe that HRPT's policies toward rents in the area are not consistent with our struggling economy. HRPT has chosen to ignore a flat rate arbitration award and continues to demand increases which could put companies in the area at risk for survival.

Last session you approved SB764 which became Act 189. Please, maintain your position by passing HB2284 and extend the life of Act 189. You had Hawaii's best interest at heart last year, and now additional fortitude is required to restate your position.

Act 189 does not change the terms of the leases. Act 189 merely says that when a long-term ground leases calls for "fair and reasonable rents," that those rates be fair and reasonable to both parties.

I respectfully and strongly request that you approve House Bill HB2284.

Aloha,

Shirley Fujimoto  
Grace Pacific Corporation  
P. O. Box 78  
Hon., HI. 96810

Email: [sfujimoto@gracepacificcorp.com](mailto:sfujimoto@gracepacificcorp.com)

**From:** bbauer@gproadwaysolutions.com  
**Sent:** Wednesday, February 10, 2010 9:14 AM  
**To:** JUDtestimony  
**Subject:** HB2284 - House Judiciary Committee this Thursday, February 11, 2010 at 2:00 pm in Room 325 of the State Capitol  
**Attachments:** ATT00001.jpg

February 10, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**  
**February 11, 2010, at 2:00 p.m., Room 325**  
**Hawaii State Capitol**

**TESTIMONY IN STRONG SUPPORT OF HB2284**  
**Real Property; Leasehold; Lease Rent Renegotiation**

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

I strongly support HB 2284 and respectfully request that your committee extend the life of Act 189. My name is Benjamin S. Bauer, I live in Waialae/Kahala. I work at GP Roadway Solutions, a subsidiary of Grace Pacific Corporation, which is located in the Mapunapuna/Sand Island/Kalihi Kai area, and employ roughly 125 people there and close to 200 statewide.

Last session your Committee passed SB764 and the Governor allowed Act 189 to become law without her signature. Act 189 was given a one year sunset in order to provide the lessor, HRPT, ample time to improve their corporate citizenship and to provide lessees rents that are "fair and reasonable" as is required under the existing leases.

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. Indeed, Jan Yokota of HRPT has sent letters to lessees that require us to waive our rights under the existing law (Act 189) now and forever before making a binding offer. Is this fair? Is this reasonable?

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, bully 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 the realities of the current and foreseeable future in Hawaii's 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. Thank you.

Ben Bauer  
General Manager  
GP Roadway Solutions  
660 Mapunapuna St.  
Honolulu, HI 96819  
(Ofc) 808-275-5287  
(Fax) 808-834-5630  
(Cell) 808-368-5209

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February 10, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**

**February 11, 2010, at 2:00 p.m., Room 325**

**Hawaii State Capitol**

**TESTIMONY IN STRONG SUPPORT OF HB2284**

**Real Property; Leasehold; Lease Rent Renegotiation**

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

I support passage of House Bill HB2284 which will 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.

The issues brought before the legislature during the last session have only worsened. HRPT's corporate policies toward rents have skyrocketed in spite of a failing economy. HRPT has chosen to ignore a \$5.26 flat rate arbitration award and continues to demand rents of \$7.00 plus 3% or %% per annum increases. This is simply price gouging.

Last session you approved SB764 which became Act 189. Please, stay your position by passing HB2284 and extend the life of Act 189. You had Hawaii's best interest at heart last year, and now additional fortitude is required to restate your position.

Act 189 does not change the terms of the leases. Act 189 merely says that when a long-term ground leases calls for "fair and reasonable rents," that those rates be fair and reasonable to both parties.

I respectfully and strongly request that you approve House Bill HB2284.

Aloha,

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

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 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,

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

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 the passage of House Bill HB2284 which is a bill to extend Act 189. As a private lessee and as a result of the downturn of our local economy, we need Act 189 extended to help our community and our small businesses, which are the backbone of our economy.

Thank you for your support in approving House Bill HB2284.

Aloha,

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

February 1, 2010

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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 the passage of House Bill HB2284 which is a bill to extend Act 189. As a lessee of industrial property in the Mapunapuna area we need Act 189 extended to stabilize the rents lessors charge and the rents that we as lessees pay

Please approve House Bill HB2284.

Aloha,

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





February 10, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**

**February 11, 2010, at 2:00 p.m., Room 325**

**Hawaii State Capitol**

**TESTIMONY IN STRONG SUPPORT OF HB2284**

**Real Property; Leasehold; Lease Rent Renegotiation**

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

I support passage of House Bill HB2284 which will 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.

The issues brought before the legislature during the last session have only worsened. HRPT's corporate policies toward rents have skyrocketed in spite of a failing economy. HRPT has chosen to ignore a \$5.26 flat rate arbitration award and continues to demand rents of \$7.00 plus 3% or \$% per annum increases. This is simply price gouging.

Last session you approved SB764 which became Act 189. Please, stay your position by passing HB2284 and extend the life of Act 189. You had Hawaii's best interest at heart last year, and now additional fortitude is required to restate your position.

Act 189 does not change the terms of the leases. Act 189 merely says that when a long-term ground leases calls for "fair and reasonable rents," that those rates be fair and reasonable to both parties.

I respectfully and strongly request that you approve House Bill HB2284.

Aloha,

A handwritten signature in black ink, appearing to read 'Craig Okutani'.

**Craig Okutani**



P.O. Box 4319

Honolulu, HI 96812

808-833-2502

cokutani@gproadwaysolutions.com



# Roadway Solutions

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February 10, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**

February 11, 2010, at 2:00 p.m., Room 325  
Hawaii State Capitol

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

I support passage of House Bill HB2284 which will 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.


The issues brought before the legislature during the last session have only worsened. HRPT's corporate policies toward rents have skyrocketed in spite of a failing economy. HRPT has chosen to ignore a \$5.26 flat rate arbitration award and continues to demand rents of \$7.00 plus 3% or \$% per annum increases. This is simply price gouging.

Last session you approved SB764 which became Act 189. Please, stay your position by passing HB2284 and extend the life of Act 189. You had Hawaii's best interest at heart last year, and now additional fortitude is required to restate your position.

Act 189 does not change the terms of the leases. Act 189 merely says that when a long-term ground leases calls for "fair and reasonable rents," that those rates be fair and reasonable to both parties.

I respectfully and strongly request that you approve House Bill HB2284.

Aloha,



Carmela Casco  
Sales Representative  
GP Roadway Solutions  
153A Alamaha Street  
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p. 808.873-7461  
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Aloha Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

I support passage of House Bill HB2284 which will 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.

The issues brought before the legislature during the last session have only worsened. HRPT's corporate policies toward rents have skyrocketed in spite of a failing economy. HRPT has chosen to ignore a \$5.26 flat rate arbitration award and continues to demand rents of \$7.00 plus 3% or 5% per annum increases. This is simply price gouging.

Last session you approved SB764 which became Act 189. Please, stay your position by passing HB2284 and extend the life of Act 189. You had Hawaii's best interest at heart last year, and now additional fortitude is required to restate your position.

Act 189 does not change the terms of the leases. Act 189 merely says that when a long-term ground leases calls for "fair and reasonable rents," that those rates be fair and reasonable to both parties.

I respectfully and strongly request that you approve House Bill HB2284.

Aloha,

A handwritten signature in black ink that reads 'Alison Kumano'.

Alison Kumano  
Graphic Designer/Sign Productions  
GP Roadway Solutions  
153A Alamaha Street  
Kahului, HI 96732  
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The issues brought before the legislature during the last session have only worsened. HRPT's corporate policies toward rents have skyrocketed in spite of a failing economy. HRPT has chosen to ignore a \$5.26 flat rate arbitration award and continues to demand rents of \$7.00 plus 3% or \$% per annum increases. This is simply price gouging.

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I respectfully and strongly request that you approve House Bill HB2284.

Aloha,

Kehau Dinson  
GP Roadway Solutions  
153A Alamaha Street  
Kahului, HI 96732  
p. 808.873-7461  
f. 808.872-9794  
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Aloha Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

I support passage of House Bill HB2284 which will 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.

The issues brought before the legislature during the last session have only worsened. HRPT's corporate policies toward rents have skyrocketed in spite of a failing economy. HRPT has chosen to ignore a \$5.26 flat rate arbitration award and continues to demand rents of \$7.00 plus 3% or 5% per annum increases. This is simply price gouging.

Last session you approved SB764 which became Act 189. Please, stay your position by passing HB2284 and extend the life of Act 189. You had Hawaii's best interest at heart last year, and now additional fortitude is required to restate your position.

Act 189 does not change the terms of the leases. Act 189 merely says that when a long-term ground leases calls for "fair and reasonable rents," that those rates be fair and reasonable to both parties.

I respectfully and strongly request that you approve House Bill HB2284.

Aloha,

Mark Sakihara  
Maui Branch Manager  
GP Roadway Solutions  
153A Alamaha Street  
Kahului, HI 96732  
p. 808.873-7461  
f. 808.872-9794  
e. [msakihara@gproadwaysolutions.com](mailto:msakihara@gproadwaysolutions.com)



# Roadway Solutions

P.O. Box 4319 • Honolulu, Hawaii 96812-4319  
153A Alamaha Street • Kahului, Hawaii 96732  
Phone (808) 873-7461 • Fax (808) 872-9794  
Lic. AC-10998 [www.GPRoadwaySolutions.com](http://www.GPRoadwaySolutions.com)

February 10, 2010

## TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

February 11, 2010, at 2:00 p.m., Room 325  
Hawaii State Capitol

### TESTIMONY IN STRONG SUPPORT OF HB2284

#### Real Property; Leasehold; Lease Rent Renegotiation

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

I support passage of House Bill HB2284 which will 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.

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Act 189 does not change the terms of the leases. Act 189 merely says that when a long-term ground leases calls for "fair and reasonable rents," that those rates be fair and reasonable to both parties.

I respectfully and strongly request that you approve House Bill HB2284.

Aloha,

Raymond DeCastro  
GP Roadway Solutions  
153A Alamaha Street  
Kahului, HI 96732  
p. 808.873-7461  
f. 808.872-9794  
e. [rdecastro@gproadwaysolutions.com](mailto:rdecastro@gproadwaysolutions.com)

February 10, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**

**February 11, 2010, at 2:00 p.m., Room 325**

**Hawaii State Capitol**

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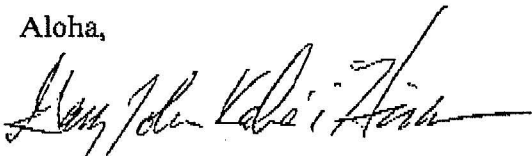
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I respectfully and strongly request that you approve House Bill HB2284.

Aloha,



Gary John Kaha'i Hiram  
660 Mapunapuna Street  
Honolulu, Hawaii 96819  
808.275.5267  
ghiram@gpoadwaysolutions.com

February 10, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**

**February 11, 2010, at 2:00 p.m., Room 325**

**Hawaii State Capitol**

**TESTIMONY IN STRONG SUPPORT OF HB2284**

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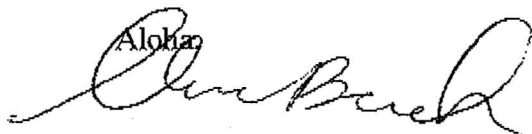
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I respectfully and strongly request that you approve House Bill HB2284.

Aloha  


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



February 10, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**

**February 11, 2010, at 2:00 p.m., Room 325**

**Hawaii State Capitol**

**TESTIMONY IN STRONG SUPPORT OF HB2284**

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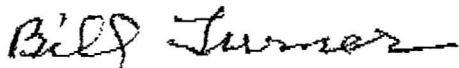
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I respectfully and strongly request that you approve House Bill HB2284.

Aloha,



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

February 10, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**

**February 11, 2010, at 2:00 p.m., Room 325**

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**TESTIMONY IN STRONG SUPPORT OF HB2284**

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Aloha,

*Bridget Kawasaki*

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

February 10, 2010

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**February 11, 2010, at 2:00 p.m., Room 325**

**Hawaii State Capitol**

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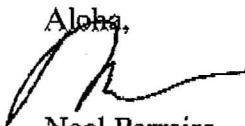
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I respectfully and strongly request that you approve House Bill HB2284.

Aloha,



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

GP Roadway Solutions

February 10, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**

**February 11, 2010, at 2:00 p.m., Room 325**

**Hawaii State Capitol**

**TESTIMONY IN STRONG SUPPORT OF HB2284**

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I respectfully and strongly request that you approve House Bill HB2284.

Aloha,

Jacinta Naomi Villanueva  
436-C Hualani St.  
Kailua, Hawaii  
808-687-0619  
Jacintajr65@yahoo.com

February 11, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**

**February 11, 2010, at 2:00 p.m., Room 325**

**Hawaii State Capitol**

**TESTIMONY IN STRONG SUPPORT OF HB2284**

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I respectfully and strongly request that you approve House Bill HB2284.

Aloha,

Edna Dunn  
edunn@gproadwaysolutions.com

February 10, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY  
February 11, 2010, at 2:00 p.m., Room 325  
Hawaii State Capitol**

**TESTIMONY IN STRONG SUPPORT OF HB2284  
Real Property; Leasehold; Lease Rent Renegotiation**

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

I strongly support HB 2284 and respectfully request that your committee extend the life of Act 189. My name is 'Auli'i Adviento, I live in Kailua. I work at GP Roadway Solutions, which is located in the Mapunapuna/Sand Island/Kalihi Kai area, and employ roughly 180 people.

Last session your Committee passed SB764 and the Governor allowed Act 189 to become law without her signature. Act 189 was given a one year sunset in order to provide the lessor, HRPT, ample time to improve their corporate citizenship and to provide lessees rents that are "fair and reasonable" as is required under the existing leases.

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. Indeed, Jan Yokota of HRPT has sent letters to lessees that require us to waive our rights under the existing law (Act 189) now and forever before making a binding offer. Is this fair? Is this reasonable?

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, bully 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 the realities of the current and foreseeable future in Hawaii's economy.

I want to stay employed. Please continue what you agreed to do last session by passing HB2284.

Sincerely,



Auli'i Adviento, Supervisor  
GP Maintenance Solutions  
A division of GP Roadway Solutions  
660 Mapunapuna St.  
(808) 833-2502  
aadvento@gproadwaysolutions.com

February 10, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY  
February 11, 2010, at 2:00 p.m., Room 325  
Hawaii State Capitol**

**TESTIMONY IN STRONG SUPPORT OF HB2284  
Real Property; Leasehold; Lease Rent Renegotiation**

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

I strongly support HB 2284 and respectfully request that your committee extend the life of Act 189. My name is Lawrence Ching, I live in Kapolei. I work, at GP Roadway Solutions, which is located in the Mapunapuna/Sand Island/Kalihi Kai area, and employ roughly 180 people.

Last session your Committee passed SB764 and the Governor allowed Act 189 to become law without her signature. Act 189 was given a one year sunset in order to provide the lessor, HRPT, ample time to improve their corporate citizenship and to provide lessees rents that are "fair and reasonable" as is required under the existing leases.

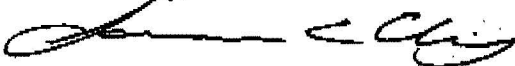
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I want to stay employed. Please continue what you agreed to do last session by passing HB2284.

Sincerely,



Lawrence Ching  
GP Maintenance Solutions  
A division of GP Roadway Solutions  
660 Mapunapuna St.  
(808) 833-2502  
lching@gproadwaysolutions.com

February 10, 2010

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**February 11, 2010, at 2:00 p.m., Room 325**  
**Hawaii State Capitol**

**TESTIMONY IN STRONG SUPPORT OF HB2284**  
**Real Property; Leasehold; Lease Rent Renegotiation**

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

I strongly support HB 2284 and respectfully request that your committee extend the life of Act 189. My name is Estanislao Fujihira, I live in Honolulu. I work, at GP Roadway Solutions, which is located in the Mapunapuna/Sand Island/Kalihi Kai area, and employ roughly 180 people.

Last session your Committee passed SB764 and the Governor allowed Act 189 to become law without her signature. Act 189 was given a one year sunset in order to provide the lessor, HRPT, ample time to improve their corporate citizenship and to provide lessees rents that are "fair and reasonable" as is required under the existing leases.


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Passage of HB2284 will extend Act 189 and hopefully remind the landowner to negotiate terms based on the realities of the current and foreseeable future in Hawaii's economy.

I want to stay employed. Please continue what you agreed to do last session by passing HB2284.

Sincerely,



Estanislao Fujihira  
GP Maintenance Solutions  
A division of GP Roadway Solutions  
660 Mapunapuna St.  
(808) 833-2502  
efujihira@gproadwaysolutions.com



February 10, 2010

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**February 11, 2010, at 2:00 p.m., Room 325**  
**Hawaii State Capitol**

**TESTIMONY IN STRONG SUPPORT OF HB2284**  
**Real Property; Leasehold; Lease Rent Renegotiation**

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

I strongly support HB 2284 and respectfully request that your committee extend the life of Act 189. My name is Daryle Kurihara, I live in Honolulu. I work, at GP Roadway Solutions, which is located in the Mapunapuna/Sand Island/Kalihi Kai area, and employ roughly 180 people.

Last session your Committee passed SB764 and the Governor allowed Act 189 to become law without her signature. Act 189 was given a one year sunset in order to provide the lessor, HRPT, ample time to improve their corporate citizenship and to provide lessees rents that are "fair and reasonable" as is required under the existing leases.

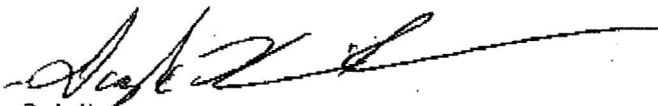
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Passage of HB2284 will extend Act 189 and hopefully remind the landowner to negotiate terms based on the realities of the current and foreseeable future in Hawaii's economy.

I want to stay employed. Please continue what you agreed to do last session by passing HB2284.

Sincerely,

Daryle Kurihara   
GP Maintenance Solutions  
A division of GP Roadway Solutions  
660 Mapunapuna St.  
(808) 833-2502

February 10, 2010

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**TESTIMONY IN STRONG SUPPORT OF HB2284**  
**Real Property; Leasehold; Lease Rent Renegotiation**

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

I strongly support HB 2284 and respectfully request that your committee extend the life of Act 189. My name is Mark Evangelista, I live in Waiānae. I work at GP Roadway Solutions, which is located in the Mapunapuna/Sand Island/Kalihi Kai area, and employ roughly 180 people.

Last session your Committee passed SB764 and the Governor allowed Act 189 to become law without her signature. Act 189 was given a one year sunset in order to provide the lessor, HRPT, ample time to improve their corporate citizenship and to provide lessees rents that are "fair and reasonable" as is required under the existing leases.

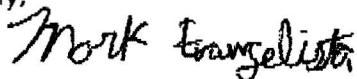
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I want to stay employed. Please continue what you agreed to do last session by passing HB2284.

Sincerely,



Mark Evangelista  
GP Maintenance Solutions  
A division of GP Roadway Solutions  
660 Mapunapuna St.  
(808) 833-2502

February 10, 2010

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

I strongly support HB 2284 and respectfully request that your committee extend the life of Act 189. My name is Jared Takeuchi, I live in Mililani. I work, at GP Roadway Solutions, which is located in the Mapunapuna/Sand Island/Kalihi Kai area, and employ roughly 180 people.

Last session your Committee passed SB764 and the Governor allowed Act 189 to become law without her signature. Act 189 was given a one year sunset in order to provide the lessor, HRPT, ample time to improve their corporate citizenship and to provide lessees rents that are "fair and reasonable" as is required under the existing leases.

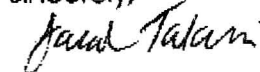
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Sincerely,



Jared Takeuchi  
GP Maintenance Solutions  
A division of GP Roadway Solutions  
660 Mapunapuna St.  
(808) 833-2502

February 10, 2010

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

I strongly support HB 2284 and respectfully request that your committee extend the life of Act 189. My name is Carlos Juano, I live in Waipahu. I work, at GP Roadway Solutions, which is located in the Mapunapuna/Sand Island/Kalihi Kai area, and employ roughly 180 people.

Last session your Committee passed SB764 and the Governor allowed Act 189 to become law without her signature. Act 189 was given a one year sunset in order to provide the lessor, HRPT, ample time to improve their corporate citizenship and to provide lessees rents that are "fair and reasonable" as is required under the existing leases.

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I want to stay employed. Please continue what you agreed to do last session by passing HB2284.

Sincerely,



Carlos Juano  
GP Maintenance Solutions  
A division of GP Roadway Solutions  
660 Mapunapuna St.  
(808) 833-2502



February 10, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**  
February 11, 2010, at 2:00 p.m., Room 325  
Hawaii State Capitol

**TESTIMONY IN STRONG SUPPORT OF HB2284**  
**Real Property; Leasehold; Lease Rent Renegotiation**

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

I strongly support HB 2284 and respectfully request that your committee extend the life of Act 189. My name is Bonnie Cooper and I own Big Rock Manufacturing Inc. which is located in Mapunapuna. Presently we employ only seven people, due to the poor economy, whereas we used to have as many as twelve or more.

Last session your Committee passed SB764 and the Governor allowed Act 189 to become law without her signature. Act 189 was given a one year sunset in order to provide the lessor, HRPT, ample time to improve their corporate citizenship and to provide lessees rents that are "fair and reasonable" as is required under the existing leases.

The issues brought before the legislature during the last session have only worsened. I understand 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.

Passage of HB2284 will extend Act 189 and hopefully remind the landowner to negotiate terms based on the realities of the current and foreseeable future in Hawaii's economy. They should attempt to understand the Hawaiian sense of aloha, and to operate differently than they would on the mainland.

It is our 27<sup>th</sup> year of manufacturing Hawaiian stone on Oahu, and I want to stay in business, keep my workers employed, and re-hire those who have been laid off due to lack of work. I have been in my Mapunapuna location for ten years, and am waiting for a reply from HRPT, as our lease expires in October.

We have spent a lot of time and money on our property, to improve it and to make it beautiful. If the increases are as they have been for others, I will be forced to find a new location. I would prefer to have a reasonable agreement with the landlords and remain where I am. We have always paid in a timely manner and should not have unreasonable increases at a time when businesses are failing due to lack of business.

I implore you to please continue what you agreed to do last session, by passing HB2284. Thank you.

Bonnie L. Cooper  
Vice President /Owner  
Big Rock Manufacturing, Inc.  
Email: [Bcooper@bigrockhawaii.com](mailto:Bcooper@bigrockhawaii.com)





February 10, 2010

Representative Jon Riki Karamatsu, Chair  
Representative Ken Ito, Vice Chair  
House Committee on Judiciary

Thursday, February 11, 2010 at 2:00 p.m.  
State Capitol, Conference Room 325

**RE: HB 2284 - Relating to Real Property**

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

My name is Jan Yokota, Vice President of the Pacific Region for Reit Management & Research LLC, the property manager for HRPT Properties Trust ("HRPT"). Through its affiliated companies, HRPT owns industrial zoned land in Māpunapuna and Sand Island and in the James Campbell Industrial Park, and, as landlord, leases many of its Hawai'i properties pursuant to long-term leases which provide for the periodic reset of rent to the then "fair and reasonable" rate.

H.B. 2284 proposes to amend Act 189, Session Laws of Hawai'i 2009, by extending its repeal date from June 30, 2010 to June 30, 2015. As you know, the purpose of Act 189 is to define by statute the meaning of the term "fair and reasonable" in HRPT's leases.

HRPT respectfully, but strongly, opposes H.B. 2284. HRPT has consistently testified before the Hawai'i State Legislature that actions that seek to change legal contracts, such as Act 189, are unconstitutional. Act 189 violates the Contracts Clause of the U.S. Constitution and is unfair to HRPT for the following reasons:

- Act 189 was targeted at (and continues to target) a single landowner—HRPT, changing the agreed upon terms of previously negotiated long-term commercial and industrial lease contracts, for the sole benefit of a small group of lessees. A state statute violates the Contracts Clause of the U.S. Constitution if the state law:
  - Substantially impairs an existing contractual relationship;
  - Does not have a "significant and legitimate public purpose"; and

- Is without a reasonable and narrowly drawn relationship between the impaired contract and the claimed public purpose.
- Under federal law governing Hawai'i, an impairment of a contract is substantial if, among other things, it alters a financial term or deprives a private party of an important right.
  - Act 189 materially affects the most essential term in a commercial and industrial lease: the lessee's obligation to pay rent.
  - Act 189 re-defines an existing term in an existing contract and would command appraisers and courts to interpret the existing term under this new legislation, contrary to the intent of the original lessor, Damon Estate.
  - As Governor Lingle admitted when she allowed the bill to become law without her signature, the purpose of the Act was to "change the process for renegotiating the amount of rent during the term of an existing commercial or industrial lease" and "this bill impacts the negotiations of lease rent..."
- There is no significant and legitimate public purpose for the Act. The stated purpose of Act 189 is to "maintain close geographic ties between small businesses and the communities they serve" and thereby "stabilize Hawai'i's economy." As the Attorney General advised the Legislature last year, there is no support for the proposition that altering HRPT's contractual rights for the benefit of a few lessees will keep small businesses close to urban communities and that this will, in turn, stabilize Hawai'i's economy. The Act is also targeted at, and impacts, a single landowner and a small number of HRPT's lessees.

In August 2009, HRPT filed a lawsuit in U.S. District Court challenging the constitutionality of Act 189. The case was assigned to Judge Susan Oki Mollway. On December 7, 2009, Judge Mollway held a hearing on the case.

At the hearing in federal court on December 7, 2009, Judge Mollway expressed concern "to the extent there's a change in the bargain that is caused by the passage of a statute because it interprets a term in a way different from what the parties intended at the time of the contract." Judge Mollway stated on the record: "If there is a change, then there may well be numerous constitutional problems with this statute."

In mid-December, Judge Mollway issued an order in which she denied the requests from all parties for summary judgment and instructed the parties to conduct further discovery. The discovery process is ongoing and it is expected that Judge Mollway will issue a final ruling on the matter after this process is concluded.

I would also like to take this opportunity to address concerns that have been raised in prior testimony.

- One of the concerns expressed by testifiers is that HRPT's rent reset proposals include "step-ups" and that such "step-ups" are highly unusual. Actually, Damon Estate did negotiate periodic rent step-ups in a number of their leases. In addition, several Māpunapuna and Sand Island lessees have entered into subleases with third parties that include annual step-ups. The Campbell leases provide for annual rent increases based on the Consumer Price Index.
- With respect to rent negotiations, we begin rental discussions with our tenants before the reset date and always attempt first to resolve our rental rates through negotiation. In the past few months, we have come to agreement on lease rent without going through the arbitration process with nine of our tenants, including four tenants with leases that include the term "fair and reasonable rent." However, if the parties do not agree, there is an arbitration mechanism in the leases to address a stalemate. In the Servco situation, for example, arbitration was initiated by Servco. Servco's appraiser proposed a rent of \$3.65 per square foot and our appraiser proposed a rent of \$6.38 per square foot. The three member panel of appraisers set the rent at \$5.26 per square foot. The process worked and we can now move forward.
- I also note that we have been providing transaction comparables to commercial real estate brokers and appraisers upon request, where permitted by the leases.
- Finally, regarding the flooding issue in Māpunapuna, we have spent over \$750,000 for engineering studies that have resulted in a remedy to resolve the tidal flooding problem. After years of research and planning, the first phase of drainage system improvements is anticipated to commence within three to six weeks, pending final approval of the State of Hawai'i Department of Health. The project should be completed within two to three weeks of commencement and we anticipate that most or all of the daily tidal flooding will cease.

In closing, we respectfully request that the Committee hold this bill given the pending litigation and the serious questions regarding Act 189's constitutionality.

Thank you for the opportunity to testify on this bill.





**E-Mail: [JUDTestimony@Capitol.hawaii.gov](mailto:JUDTestimony@Capitol.hawaii.gov)**

**February 2, 2010**

**Opposition to HB 2284 Relating to Real Property  
(Sunset date extension re Act 189 - Alteration of commercial lease  
renegotiation terms)**

Honorable Chair Angus K. McKelvey, Vice Chair Isaac W. Choy, and  
Member of the Committee on Economic Revitalization, Business & Military Affairs

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

**LURF strongly opposes HB 2284**, and respectfully requests that this Committee to **hold HB 2284, because this measure would extend Act 189, which interferes with the terms of existing contracts, and such alteration of commercial and industrial contracts is unconstitutional, special legislation targeted at one landowner.** Our objections are based on, among other things, the following:

- The stated purpose for Act 189 is not legally justifiable, and the purported intent and purpose (to "stabilize the State's economy," "during the recessionary period," by "preserving the proximity of small businesses to urban communities") is a "pretext."
- Act 189 fails to meet the legal tests of under the Contracts Clause, and is thus an unconstitutional violation of the United States Constitution.
- Act 189 is a "special law" targeted against a single land owner (HRPT Properties Trust), which violates Article XI, section 5 of the Hawaii Constitution. It is also not responsible and prudent public policy to pass a state-wide 'special law' because of a dispute between one lessor and a group of lessees.
- It is unfair to change the terms of existing contracts to favor one party, and thereby alter historical precedent in defining "fair and reasonable annual rent" in HRPT's prior lease negotiations.
- There is no need for this legislation – current lessees are going through the renegotiation process as provided in the existing contracts.

- Other remedies and less intrusive means to achieve public purposes exist – “Don’t legislate, just arbitrate.”
- Legislation similar to Act 189, which altered lease terms to the benefit of lessees and to the detriment of lessors, has been found to be unconstitutional by the Attorney General.

**Act 189 (2009):** LURF understands that Act 189 was proposed by lessees who claim they are having trouble negotiating their leases with one lessor - HRPT. Act 189 alters the existing terms of HRPT leases by inserting a new definition of “fair and reasonable annual rent.” HRPT, which is the sole target of Act 189, has filed a federal lawsuit challenging the constitutionality of Act 189 (HRPT Properties Trust, *et al.*, v. Linda Lingle, in her capacity as Governor of the State of Hawaii, Civil No. 09-0375). We hope that the federal court case and/or further negotiations, arbitration and mediation can resolve such differences and result in renegotiated leases which can be accepted by both parties.

**HB 2284.** Act 189 is supposed to sunset on June 30, 2010. This bill, however, proposes to extend that sunset date for five years, to June 30, 2015; provided that the repeal of this Act shall not affect renegotiations of any lease or sublease rental amount, the renegotiation date for which occurred before July 1, 2015; provided further that this Act shall not apply to any lease scheduled for renegotiation after June 30, 2015.

**LURF’S OBJECTIONS.** LURF **opposes HB 2284 and the extension of Act 189**, based on, among other things, the following:

- **The stated purpose for Act 189 is not legally justifiable.** Under the circumstances, “stabilizing Hawaii’s economy by maintaining close geographic ties between small businesses and the communities they serve” is not a justifiable valid public purpose which would justify altering the terms of existing lease contracts. There is no credible evidence that changing the terms of contracts will assure that small businesses stay close to their customers, or that small businesses will fail if they move to another location – this unconstitutional law cannot be “fixed” by merely stating an illogical “purpose and intent” for the bill, without credible facts supporting it. The purported intent and purpose, which is to “stabilize the State’s economy,” “during the recessionary period,” by “preserving the proximity of small businesses to urban communities” **is a “pretext”** (alleged reason, ploy, ruse, red herring, bogus).
  - Is there any “proof” or evidence to support the stated purpose for Act 189? Or, is the stated purpose mere pretext?
  - How many leases will this law effect? The testimony confirms that affect of Act 189 will be limited to the leases with one lessor – HRPT. How will affecting only HRPT leases assure the proximity of small businesses to the urban communities they serve and stabilize the entire State’s economy?
  - If that alleged purpose of supporting small businesses were really true, why does the law only apply to leases with one lessor, HRPT?
  - If Act 189 was an attempt to stabilize the economy by changing the terms of lease negotiations - shouldn’t the law apply to the terms of all of the existing business leases in the state? Instead, this bill is meant to affect the lease negotiations with only one lessor, HRPT.
  - If the alleged purpose is to truly help lessees, “especially during the recessionary period” - **Why does this bill extend Act 189 for five**

**years, until June 30, 2015? Is there any evidence that the “recession” will last 5 years?**

➤ **Act 189 fails to meet the legal tests under the Contracts Clause, and is thus is an unconstitutional violation of the United States**

**Constitution.** We believe that in the current Federal court challenge, the provisions of Act 189 will fail to meet the legal test to determine whether a statute is constitutional under the Contracts Clause, as set forth in the Hawaii Supreme Court case of Applications of Herrick & Irish, 82 Haw. 329, 922 P.2d 942 (1996) and quoted by the Attorney General in its prior opinions relating to other bills which have attempted to alter existing lease terms to benefit lessees:

“In deciding whether a state law has violated the federal constitutional prohibition against impairments of contracts, U.S. Const., art I, § 10, cl.1, we must assay the following three criteria:

- 1) Whether the state law operated as a substantial impairment of a contractual relationship;
- 2) Whether the state law was designed to promote a significant and legitimate public purpose; and
- 3) Whether the state law was a reasonable and narrowly-drawn means of promoting the significant and legitimate public purpose.”

Act 189 cannot be justified under any of these legal tests. As the facts prove:

- It substantially impairs the contractual relationship between the lessor and lessee;
- It is not designed to promote a significant and legitimate public purpose; and
- It is not a reasonable and narrowly-drawn means of promoting a significant and legitimate public purpose.

➤ **Act 189 is a “special law” targeted against a single land owner (HRPT Properties Trust), which violates Article XI, section 5 of the Hawaii Constitution.** The proponents private real estate attorney and witnesses who supported Act 189 admitted that the lease alterations in the bill are directed only to one lessor, – HRPT. According to the testimony, there is no other landowner who include the terms “fair and reasonable” in their leases. The proponents’ paid legal witness claimed that in the future, there could be other leases which include the terms “fair and reasonable” in their rent renegotiation clauses, however, this is clearly a “class of one” because legislators, the proponents’ private real estate attorney, and witnesses in support and in opposition to the bill have all stated that if this legislation passes, no other landowner would be foolish enough to include the term “fair and reasonable” in their leases. Thus, Act 189 is a “**special law**,” which is prohibited by the Hawaii Constitution, because it applies to one particular lease renegotiation provision in the leases of just one particular lessor - HRPT, discriminates against one particular lessor - HRPT, and operates in favor of certain lessees, by granting them a special or exclusive privilege. The proponents of this bill and the Governor have admitted that Act 189 was intended to target HRPT, and there is no testimony or evidence regarding any other lessors in the state who utilize the lease renegotiation language which is the subject of Act 189.

- **It is also not responsible and prudent public policy to pass a state-wide ‘special law’ because of a dispute between one lessor and a group of lessees.** How many state-wide leases are affected? Does a dispute with one lessor warrant a new state-wide law purporting to save Hawaii’s economy? We also understand that the proponents have reportedly testified that Act 189 is being used as “leverage” in their lease negotiations with HRPT.
- **It is unfair to change the terms of existing contracts to favor one party, and thereby alter historical precedent in defining “fair and reasonable annual rent” in HRPT’s prior lease negotiations.** With respect to Act 189, the targeted lessor, HRPT, has submitted testimony and evidence confirming that this legislation would alter historical precedent in defining “fair and reasonable annual rent” in HRPT’s prior lease negotiations. The evidence presented proves that in prior lease negotiations, the term “fair and reasonable” has been defined as “land value multiplied by rate of return” in the following cases: Mapunapuna lease (1997), Pahounui lease (1998) and Moanalua lease (2000).
- **There is no need for this legislation – current lessees are going through the renegotiation process as provided in the existing contracts.** The written and oral testimony at the various committee hearings on Act 189 confirm that HRPT has successfully renegotiated a mutually acceptable rent rate in dozens of leases which have been up for renegotiation.
- **Other remedies and less intrusive means to achieve public purposes exist – “Don’t legislate, just arbitrate.”** Instead of creating a new law that alters only HRPT’s current lease contracts, the disgruntled lessors should just use the existing rights and remedies in their lease contracts – arbitration, or they could request inexpensive mediation. The written and oral testimony relating to Act 189 confirms that HRPT has always accepted lessees’ requests for arbitration and mediation.
- **Legislation similar to Act 189, which altered lease terms to the benefit of lessees and to the detriment of lessors, has been found to be unconstitutional by the Attorney General.** Over the past several years, legislation similar to Act 189 has been introduced with the recurring theme of legislatively altering the terms and conditions of existing leases to the benefit of lessees and to the detriment of lessors:
  - In 2008, HB 1075 proposed virtually identical alterations of existing lease contracts to favor the lessee, however, the Senate Economic Development and Tourism Committee (EDT) held the bill. EDT later placed the contents of HB 1075 into HB 2040, SD2, however that bill was held in Conference Committee.
  - In 2007, SB 1252 and SB 1619, proposed virtually identical alterations of existing lease contract to favor the lessee;
  - In 2006, SB 2043, would have imposed a surcharge tax on the value of improvements to real property subject to reversion in a lease of commercial or industrial property;
  - In 2000, SB 873 SD 1, .D 2 also attempted to alter existing lease contract terms to the detriment of lessors and to the benefit of lessees by

proposing to alter existing lease terms to require a lessor to purchase a lessee's improvements at the expiration of the lease term. The Department of Attorney General opined that SB 873, SD 1, HD 2 violated the Contracts Clause (Article I, Section 10) of the U.S. Constitution as follows: "SB 873, as presently worded, will substantially impair existing leases without furthering any apparent public purpose... [It is] unlikely that SB 873 will be found to be a 'reasonable and narrowly-drawn means of promoting... [A] significant and legitimate public purpose.'" Governor Cayetano relied on the Attorney General's opinion, and vetoed SB 873, SD 1, HD 1.

- In 2001, in response to HB 1131, HD 1, yet another bill which proposed to alter existing lease contracts to favor lessees, the Attorney General again reaffirmed its opinion that the proposed bill violated the Contracts Clause of the U.S. Constitution.
- In 1987, in the Hawaii Supreme Court case of Anthony v. Kualoa Ranch, 69 Haw. 112, 736 P.2d 55 (1987), the Court ruled that a statute requiring a lessor to purchase a lessee's improvements at the expiration of the lease term violated the Contracts Clause. The Court observed that:

"This statute, as applied to leases already in effect, purely and simply, is an attempt by the legislature to change contractual remedies and obligations, to the detriment of all lessors and to the benefit of all lessees, without relation to the purposes of the leasehold conversion act; without the limitations as to leaseholds subject thereto contained in the conversion provisions; not in the exercise of the eminent domain power; but simply for the purpose of doing equity, as the legislature saw it. If there is any meaning at all to the contract clause, it prohibits the application of HRS §516-70 to leases existing at the time of the 1975 amendment. Accordingly, that section, as applied to leases existing at the time of the adoption of the 1975 amendment, is declared unconstitutional."

**CONCLUSION.** The intent and application of Act 189, and proposed HB 2284, which intends to extend Act 189, are unconstitutional, profoundly anti-business and bad public policy, and therefore we respectfully request that **HB 2284** be held in this Committee.

Thank you for the opportunity to express our **opposition to HB 2284.**



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February 10, 2010

**The Honorable Jon Riki Karamatsu, Chair**

House Committee on Judiciary

State Capitol, Room 325

Honolulu, Hawaii 96813

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

**HEARING: Thursday, February 11, 2010 at 2:00 p.m.**

Aloha Chair Karamatsu, Vice Chair Ito, 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.





Representative Jon-Riki Karamatsu  
Representative Kenneth Ito

Re: HB 2284, Real Property - Testimony in Support  
Hearing February 11, 2010, 2:00 p.m., Room 325

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

My name is Jay Fidell and I am general counsel for Citizens for Fair Valuation, Inc., a Hawaii nonprofit corporation, and I write in ardent support of HB 2284.

### BROKEN PROMISES

Last year, after extensive discussion and debate, this Legislature passed Act 189 and the governor let it become law. The final bill included a one year sunset date. This was included because HRPT had so often and vigorously promised the committees and legislators before whom it appeared that it would clean up its act. The sunset date was set at one year on the understanding and assumption that HRPT would be faithful to those promises.

But HRPT has not been faithful to those promises. It has continued to do all of the bad things it was doing before. That includes making comparables secret and confidential so neighboring tenants would not have the benefit of knowing about them or using them in renegotiations; sending out Take it or Leave it offers and ignoring tenant counteroffers; refusing to communicate with tenants and failing to respond to tenant inquiries for six months at a time; demanding that tenants agree to disregard Act 189 and to various lease amendments that favored only HRPT; and disregarding arbitration awards that HRPT didn't like.

These strategies are not intended to achieve fair and reasonable rents but to systematically push rents and landlord profits as high as humanly possible, much higher than fair and reasonable, despite the requirements of the lease.

Believe it or not, HRPT is now telling the Legislature that it has cleaned up its act since last year. That is simply not true, as dozens of witnesses will attest. HRPT has not cleaned up its act at all, and in fact has gotten worse since last year. As a result, this year CFV submitted HB 2884 to extend the sunset for five years. Act 189 should certainly not be permitted to sunset - the reasons for the one year sunset have not been met in any way. The Legislature cannot afford to forget or excuse all the promises that HRPT made to it.

### RED HERRING

Last year, HRPT also opposed the bill on the basis that Act 189, which says the rent shall be fair and reasonable for both parties, somehow changed the contract language, which provides that the rent shall be fair and reasonable,

and is therefore unconstitutional. But all you need to do is read it to see that it doesn't change the lease at all. The Legislature didn't buy HRPT's red herring argument then, and it shouldn't be distracted by that argument now. There is no question that this Act affects so much land and so many people and businesses that it affects the state in general and the state's economy, and is therefore a legitimate issue for legislative action.

As soon as Act 189 was passed, HRPT filed a federal suit challenging the constitutionality of the Act, and it moved for summary judgment. The court denied that motion with all cross motions. Discovery is now in process, and it is not likely that the case will be resolved any time soon. HRPT has said it will appeal any result it doesn't like and that won't be resolved any time soon either.

No ruling or order has been made to impugn or deny the constitutionality of the Act, and in the absence of such ruling the Act must be treated as constitutional for all purposes. The Attorney General of Hawaii is actively and aggressively defending the constitutionality of the Act in the suit HRPT has filed. Citizens for Fair Valuation is an intervenor in that case, and through its attorney Professor Jon Van Dyke, noted constitutional expert at the William S. Richardson School of Law at UH, is also actively defending the constitutionality of the Act. HRPT is in no position to tell you that it has somehow won the case.

HRPT argues that because it filed this suit, the Legislature should let Act 189 expire. That argument makes no sense at all and is an attempt to fool the Legislature. The Legislature diligently considered and passed Act 189 last year and owes it to itself and its constituents to stick by the decision it made. For the public to have confidence in the Legislature, the Legislature should not change with the season. It should demonstrate continuity and consistency, along with individual and collective courage, on issues like this.

## SCORCHED EARTH

The only question before the house is whether Act 189 should be extended, and the bottom line answer is that if the Legislature extends the Act it will be sending a message to HRPT to be fair and reasonable. Contrariwise, if the Legislature does not extend the Act it will be sending an entirely different kind of message to HRPT - namely, that HRPT is free to continue its bad acts.

HRPT would tell the Legislature to send our people away without redress, to have them seek redress elsewhere. But in practical fact, there is no other place they can go. The citizens of this state have a right to ask the Legislature to redress their grievances, and the Legislature has a right, and the power, to do so in accordance with its perception of public need and its conscience. The Legislature redressed that grievance properly and in the way it saw fit, and there is no reason why it should reverse itself now less than a year later.



The reality is that HRPT takes the same scorched earth approach in arbitration as in court. Arbitration by MAI appraisers in these proceedings costs hundreds of thousands of dollars and months or even years to complete. Before you ever get to your own attorneys' fees, the fees of three arbitrators sitting on such a panel will be \$45,000 or more. The cost of arbitration these days is multiples more than it was a few years ago.

To litigate in court is to litigate on HRPT's most familiar turf, and costs even more than any arbitration. HRPT is highly litigious and as a national REIT its resources are practically endless. It would be to HRPT's interest for this Legislature to send these tenants into that kind of economic meat grinder to set the rent. Many of them would not come out again.

And the resolution of one arbitration or court case does not resolve things for the hundreds of tenants involved. For maximum intimidation, HRPT would put each tenant to the test and expense of fighting separately in endless dispute and backbreaking expense. The threat of this prospect would make most people capitulate, and that result is exactly what is intended.

#### FAIR AND REASONABLE?

After great expense and delay, Servco won its recent arbitration against HRPT. The result was \$5.26 per foot without any step-ups and thus dramatically less than what HRPT was demanding. But HRPT doesn't like this award and simply refuses to accept it for neighboring tenants. Is that fair and reasonable?

The result is that if a given tenant wants what Servco got in that arbitration, he has to spend the money that Servco spent in its lengthy arbitration. Otherwise, the tenant has to take HRPT's outrageous Take it or Leave it offer, driving rents higher and higher, way over anything close to fair and reasonable.

The most chilling point of all is that HRPT continues to vigorously oppose a bill that says no more than the rent will be fair and reasonable, just as provided in the lease. Why would any landowner oppose language that calls for the rent to be fair and reasonable except if it wishes the rent to be unfair or unreasonable instead? The answer is clear, and frankly so is the motivation.

HRPT is concerned only with making its own unreasonable rental increase expectations come true, not with the welfare of our people or our state. It's the Legislature that needs to be concerned with the welfare of our people and our state. The Legislature should not be distracted by specious arguments from HRPT and its agents. Please see through those arguments and pass HB 2284.

Thank you for your consideration of my views in this regard.

Very truly yours,

Jay M. Fidell

JMF:dt

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**

**February 11, 2010, at 2:00 p.m., Room 325**

**Hawaii State Legislature**

**In Support of HB 2284**

**Testimony of Jon M. Van Dyke**

**On Behalf of Citizens for Fair Valuation**

**VIA Facsimile: 586-8494**

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

**Introduction**

HB 2284 (and its companion bill SB 2020) Relating to Real Property would extend the life of Act 189 (2009) for another five years, until 2015.

**Separation of Powers**

It has been clearly established since the 1930s that decisions regarding economic and social welfare matters are to be made by the legislative branch and that courts will defer to such decisions unless they are arbitrary and capricious. This deferential (or "rational basis") level of judicial review was explained in *United States v. Carolene Products*, 304 U.S. 144 (1938), where the Court said in a democratic society the people's representatives should be free to address economic situations without close judicial scrutiny, and that the powers given to courts to examine (and sometimes strike down) legislation should be reserved to situations involving violations of specific constitutional rights, situations where the political processes themselves need protection, and situations involving "discrete and insular minorities." Among the many other cases confirming that a deferential "rational basis" level of judicial review applies to legislation involving economic and social welfare issues are *Railway Express Agency, Inc. v. New York*, 302 U.S. 106 (1949); *Williamson v. Lee Optical*, 348 U.S. 483 (1955); *Dandridge v. Williams*, 397 U.S. 471 (1970); and *Federal Communications Commission v. Beach Communications, Inc.*, 508 U.S. 307 (1993).

The Contract Clause in Article I, Section 10, is written as a limitation on state power ("No State shall...pass any...Law impairing the Obligation of Contracts...."), but it has also been interpreted to give state legislatures broad power to adjust contractual relationships for important societal purposes. A leading constitutional law specialist, Erwin Chemerinsky (Dean of the new law school at the University of California Irvine), has explained that state statutes are upheld even if they interfere with contractual rights, *so long as they meet a rational basis test*. Not surprisingly, virtually all laws have been found to meet *this deferential scrutiny*.@ ERWIN CHERMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 637 (3d ed. 2006)

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

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Testimony of Jon M. Van Dyke In Support of HB 2284

(emphasis added). The U.S. Supreme Court articulated this deferential level of scrutiny in *Home Building & Loan Assoc. v. Blaisdell*, 290 U.S. 398 (1934), where the Court upheld a Minnesota law designed provide relief for debtors by creating a moratorium on the foreclosure of mortgages during the Depression. Even though the original purpose of the Contract Clause was to limit this type of debtor-relief legislation, the Court ruled that the Minnesota law did not violate the Contract Clause because it was an emergency measure designed to protect the vital interests of the community and a basic interest of society. *Id.* at 439 and 445.

Since then, federal (and Hawaii) decisions have deferred broadly to state legislation relating to contractual situations. The governing test, as explained in *In re Herrick*, 82 Hawaii 329, 340, 922 P.2d 942, 953 (1996), is “(1) whether the state law operated as a substantial impairment of a contractual relationship; (2) whether the state law was designed to promote a significant and legitimate public purpose; and (3) whether the state law was a reasonable and narrowly-drawn means of promoting the significant and legitimate public purpose.” With regard to the first criterion, the Court went on to explain that an impairment is not substantial unless it interferes with the legitimate expectations of the contracting parties, and that in reaching such a determination courts must examine the severity of the impairment and the extent to which the subject matter has been regulated in the past. *Id.* at 341, 922 P.2d at 954.

The deferential approach taken by courts is illustrated in *Energy Reserve Group v. Kansas Power & Light*, 459 U.S. 400, 413 (1983), where the U.S. Supreme Court upheld a Kansas law that restricted a natural gas producer from charging higher prices, explaining that in reviewing economic and social regulation, courts properly defer to legislative judgments as to the necessity and reasonableness of a particular measure. (Emphasis added.) Other U.S. Supreme Court cases applying deferential review when rejecting Contract Clause claims include *El Paso v. Simmons*, 379 U.S. 497, 513 (1965); *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983); *Keystone Bituminous Coal Assoc. v. DeBenedictis*, 480 U.S. 470 (1987); and *General Motors v. Romein*, 503 U.S. 181 (1992). The only U.S. Supreme Court case in recent decades striking down a state statute based on the Contract Clause is *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978), which is frequently characterized as an anomaly, based on its unique facts.

It is thus clear from these precedents that the Legislature is within its power to enact legislation (as it did in Act 189, which would be extended in HB 2284) to explain to negotiators and arbitrators working with long-term ground leases that allow for “fair and reasonable” rent resets that this term should “[b]e construed to require that the rent shall be fair and reasonable to both the lessor and the lessee to the lease” and that they should “[t]ake into account any and all relevant attendant circumstances to the lease” including “[t]he uses and intensity of the use of the leased property” and “[t]he surface and subsurface characteristics of the leased property and the

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surrounding neighborhood.” These modest interpretive guidelines cannot be viewed as imposing a “substantial impairment” on the contractual rights of either party, and they are “a reasonable and narrowly-drawn means of promoting the significant and legitimate public purpose,” namely the problem created by the concentration of ownership of industrial and commercial lands near Honolulu’s business center.

As Section 1 of Act 189 explains, this statute was designed “to stabilize Hawaii’s economy, especially during the United States’ current recessionary period,” and to do so “without substantial reduction in the economic benefit to the owners or impact on their ownership of the land, without impairing their lease contracts, and without the taking of any property rights without due process of law.” Section 1 also explains that Amaintaining close geographic ties between small businesses and the communities they serve is a public purpose that requires legislative support.” These are certainly significant and legitimate public purposes, and they are directly promoted by the provisions in Section 2.

It is thus clear from the governing case law that enacting legislation to address economic concerns is within the power of the legislative branch and that courts will defer to such enactments unless they are arbitrary or capricious or impose a substantial impairment on preexisting contractual rights without any significant and legitimate public purpose.

**The Current Challenge to the Constitutionality of Act 189**

HRPT and its affiliate companies, which now own the former Damon Estate Lands as well as most of the former Campbell Estate Lands, has brought a claim in the U.S. District Court for the District of Hawaii challenging the constitutionality of Act 189, claiming that violates the Contract Clause, the Equal Protection Clause, the Bill of Attainder Clause, the Due Process Clause, the Commerce Clause, the Takings Clause, and the Ex Post Facto Clause of the U.S. Constitution. Governor Lingle is actively defending the constitutionality of Act 189, as is Citizens for Fair Valuation, which was accepted as an Intervenor-Defendant in the case. On December 22, 2009, the Honorable Susan Oki Mollway, Chief Judge of the U.S. District Court for the District of Hawaii, issued an Order denying the motions for summary judgment filed by the parties and stating that the record was not yet adequate to determine whether HRPT and its affiliates were injured by the statute and thus had “standing” to challenge it. The parties are now engaged in the process of supplementing the record regarding the original intent of the parties to the Damon Estate’s longterm ground leases, and further motions for summary judgment are likely to be filed in the coming weeks.

Act 189 thus survived the initial challenge filed by HRPT seeking to have the statute declared unconstitutional on its face and further proceedings will be held to determine whether

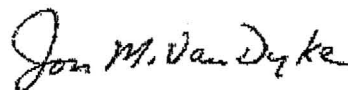
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HRPT and its affiliates can establish that they have been injured and thus have standing to challenge the statute. If HRPT is able to meet this burden, then the court will address the substantive issues related to the claims raised by HRPT. To prevail, HRPT will ultimately have to establish that its contractual rights have been substantially burdened and that Act 189 is not reasonably related to a significant and legitimate public purpose, and it will have to overcome the deferential level of judicial review applicable to economic regulations described above. It is difficult to predict the time frame for these forthcoming proceedings, and there may be an appeal after the ruling of the U.S. District Court.

The District Court's action in dismissing the initial motion for summary judgment filed by HRPT and its affiliates means that Act 189 is still now the governing law, and indicates that no barriers preclude the extension of Act 189 for another five years through the enactment of HB 2284. The deferential "rational-basis" level of judicial review described above will be applied to this enactment.



Jon M. Van Dyke

February 10, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY  
February 11, 2010, at 2:00 p.m., Room 325  
Hawaii State Capitol**

**TESTIMONY IN STRONG SUPPORT OF HB2284  
Real Property; Leasehold; Lease Rent Renegotiation**

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

I strongly support HB 2284 and respectfully request that your committee extend the life of Act 189. My name is William Paik, I live in Kaimuki. I work at GP Roadway Solutions, which is located in the Mapunapuna/Sand Island/Kalihi Kai area, and employ roughly 200 people.

Last session your Committee passed SB764 and the Governor allowed Act 189 to become law without her signature. Act 189 was given a one year sunset in order to provide the lessor, HRPT, ample time to improve their corporate citizenship and to provide lessees rents that are "fair and reasonable" as is required under the existing leases.

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. Indeed, Jan Yokota of HRPT has sent letters to lessees that require us to waive our rights under the existing law (Act 189) now and forever before making a binding offer. Is this fair? Is this reasonable?

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, bully 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 the realities of the current and foreseeable future in Hawaii's 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. Thank you.

William Paik  
GP Roadway Solutions  
660 Mapunapuna St  
(808) 833-2502  
williamapaik@aol.com



## karamatsu1-Kenji

---

**From:** CSaiki@gracepacificcorp.com  
**Sent:** Wednesday, February 10, 2010 9:19 AM  
**To:** JUDtestimony  
**Subject:** HB 2284

Aloha Chair(s), Vice Chair(s), and Members of the Committee:

I strongly support HB 2284 and respectfully request that your committee extend the life of Act 189. My name is Cindy Saiki, I live in Aiea. I work at GP Roadway Solutions, which is located in the Mapunapuna/Sand Island/Kalihi Kai area, and employs roughly 200 people.

Last session the Committee passed SB764 and the Governor allowed Act 189 to become law without her signature. Act 189 was given a one year sunset in order to provide the lessor, HRPT, ample time to improve their corporate citizenship and to provide lessees rents that are "fair and reasonable" as is required under the existing leases.

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Passage of HB2284 will extend Act 189 and hopefully remind the landowner to negotiate terms based on the realities of the current and foreseeable future in Hawaii's economy.

We want to stay in business and keep workers employed. Please continue what you agreed to do last session by passing HB2284. Thank you.

Best Regards,

Cindy Saiki, SPHR

Human Resources Manager

Grace Pacific Corporation, PO Box 78, Honolulu, HI 96810

Ph: 808-674-5227 Fax: 808-674-1355

[www.gracepacificcorp.com](http://www.gracepacificcorp.com)



An Equal Opportunity Employer

**Darrell Goo**  
**110 Puuhale Road**  
**Honolulu, Hi 96819**

February 10, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**  
**February 11, 2010, at 2:00 p.m., Room 325**  
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**TESTIMONY IN STRONG SUPPORT OF HB2284**  
**Real Property; Leasehold; Lease Rent Renegotiation**

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

I support passage of House Bill HB2284 which will 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.

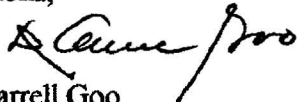
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Last session you approved SB764 which became Act 189. Please, stay your position by passing HB2284 and extend the life of Act 189. You had Hawaii's best interest at heart last year, and now additional fortitude is required to restate your position.

Act 189 does not change the terms of the leases. Act 189 merely says that when a long-term ground leases calls for "fair and reasonable rents," that those rates be fair and reasonable to both parties.

I respectfully and strongly request that you approve House Bill HB2284.

Aloha,



Darrell Goo  
110 Puuhale Road  
Honolulu, Hi 96819  
842-3222  
dgoo@gracepacificcorp.com

February 10, 2010

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I respectfully and strongly request that you approve House Bill HB2284.

Aloha,



Raymond Nii  
98-1156A Kaamilo Street  
Aiea, Hawaii 96701  
Phone: 479-5666  
Email: rnii@gracepacificcorp.com

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Aloha,

Full Name *JASON R.T. AMES*  
Address *110 PIUHALE ROAD*  
City, State *HONOLULU, HI 96819*  
Phone Number *808-842-3245*  
Email Address *james@gracepacifircorp.com*

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Aloha,

*Valerie K Sato*

Full Name: Valerie K. Sato

Address: 110 Puuhale Road

City, State: Honolulu, HI

Phone Number: (808)845-3991

Email Address: vsato@gracepacificcorp.com

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Aloha,

Full Name *Iris Nishihira*  
Address *540 Kulionou Rd*  
City, State *Honolulu, HI 96821*  
Phone Number *221-9228*  
Email Address *inshihira@gracepacificcorp.com*

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Aloha,



Lani H. Fukunaga  
110 Puuhale Road  
Honolulu, Hawaii 96819  
(808) 842-3235  
[lfukunaga@gracepacificcorp.com](mailto:lfukunaga@gracepacificcorp.com)

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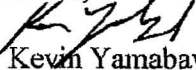
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Aloha,

  
Kevin Yamabayashi  
110 Puuhale Rd.  
Honolulu, HI 96819  
(808)845-3991



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Janet Y. Ishimine  
110 Puuhale Road  
Honolulu, HI 96819  
(808)845-3991

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Aloha,



**Shirley Simao**  
**92-1151 Hoiike Way**  
**Kapolei, HI 96707**  
**Phone: 842-3268**  
**ssimao@gracepacificcorp.com**

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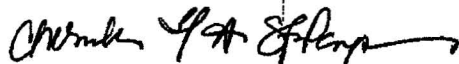
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Aloha,



Cherish H.A. Stalcup  
27A Hill Drive  
Wahiawa, HI 96786  
808-621-7597  
trics808@yahoo.com

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I respectfully and strongly request that you approve House Bill HB2284.

Aloha,

Full Name	Randall I. Matsumoto
Address	110 Puuhale Road
City, State	Honolulu, Hawaii
Phone Number	(808) 842-3227
Email Address	rmatsumoto@gracepacificcorp.com

02/10/2010 10:42 AM 000 042 0400  
February 10, 2010

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The issues brought before the legislature during the last session have only worsened. HRPT's corporate policies toward rents have skyrocketed in spite of a failing economy. HRPT has chosen to ignore a \$5.26 flat rate arbitration award and continues to demand rents of \$7.00 plus 3% or \$% per annum increases. This is simply price gouging.

Last session you approved SB764 which became Act 189. Please, stay your position by passing HB2284 and extend the life of Act 189. You had Hawaii's best interest at heart last year, and now additional fortitude is required to restate your position.

Act 189 does not change the terms of the leases. Act 189 merely says that when a long-term ground leases calls for "fair and reasonable rents," that those rates be fair and reasonable to both parties.

I respectfully and strongly request that you approve House Bill HB2284.

Aloha,

*Elnora Barbadillo*

Elnora Barbadillo  
94-1074 Kepakepa St.  
Waipahu, HI 96797  
845-3991  
nbarbadillo@gracepacificcorp.com

February 10, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**

**February 11, 2010, at 2:00 p.m., Room 325**

**Hawaii State Capitol**

**TESTIMONY IN STRONG SUPPORT OF HB2284**

**Real Property; Leasehold; Lease Rent Renegotiation**

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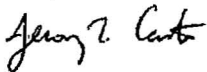
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Aloha,



Jeromy T. Castro  
91-1032 Noholike Street  
Ewa Beach, HI 96706  
685-4864  
jermyrna@hawaii.rr.com

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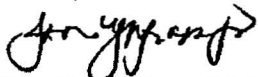
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Aloha,



Jennifer Gallego-Nakamoto  
4528 Ukali Street  
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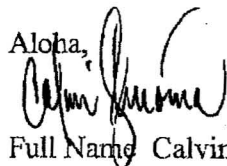
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Aloha,



Full Name Calvin Shiroma

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Phone Number 808-216-1660

Email Address cshiroma@gracepacificcorp.com

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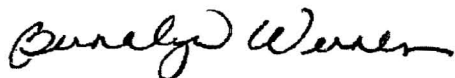
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Aloha,



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Email Address	bwerner@gracepacificcorp.com