

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

August 26, 2016

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

GL S-4524

(Maui)

Request by Kyle Gusman Regarding Assignment of Interest of Lloyd Abreu  
(Deceased), Co-Lessee in General Lease No. S-4524, a pasture lease, to Kyle  
Gusman, and for Extension of General Lease No. S-4524, Kawaipapa and Wakiu,  
Hana, Maui; TMK No. (2) 1-3-006:007

APPLICANT:

Kyle Gusman

LEGAL REFERENCE:

Section 171-36, Hawaii Revised Statutes, as amended.

LOCATION:

Portions of the Government lands at Kawaipapa and Wakiu, Hana, Maui, Hawaii, TMK  
No. (2) 1-3-006:007, shown on Exhibit A

AREA:

393 acres, more or less

ZONING:

State Land Use District:	Agriculture, Conservation, Rural, Urban
County of Maui:	Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CHARACTER OF USE:

Pasture purposes

DCCA VERIFICATION:

Not applicable.

REMARKS:

General Lease No. S-4524 (GL 4524) was issued by public auction on July 8, 1976 to Hazel Oliveira and Louis Abreu. The lease document dated January 10, 1977 was for the term of September 1, 1976 to August 31, 2001 (25 years). The lessees were Hazel Oliveira (widow) and Louis J. Abreu (husband of Ethel K. Abreu) dba H & E Ranch. The lessees were not husband and wife and the lease did not state that they were holding the lease as joint tenants. Therefore, they held the lease as tenants in common.

A withdrawal of 14 acres was done in 1985 and a withdrawal of another 14 acres was done in 1986 for the purposes of obtaining landfill material by the State.

On August 10, 2001, the Board approved a one-year holdover of the lease. By this time, Louis Abreu was deceased.

By Extension of General Lease No. S-4524, dated May 30, 2003, the lease was extended for an additional fifteen years, from August 1, 2001 to August 31, 2016.

A Consent to Assignment of General Lease No. S-4524 was executed on May 30, 2003. The assignment dated May 1, 2002 was made by Hazel Oliveira to Ethel K. Abreu, widow, and Lloyd F. Abreu, unmarried. Ethel was Lloyd's mother. There was no specification of a joint tenancy between Ethel and Lloyd, so the interest assigned was to Ethel and Lloyd as tenants in common.

PROBATE MATTERS

In 2014, Lloyd Abreu submitted to Land Division a notarized letter, dated January 9, 2014 and addressed to Chair William Aila, stating that he wished "to renew" his lease. He explained that he is the oldest son of Louis and Ethel Abreu who have died. He said,

"I would also like to add my very close friend and partner, Kyle Kimokeo Gusman to any future lease or leases because of my partial disability." See Exhibit B.

Daniel Ornellas, Maui District Land Agent, wrote to Kyle on January 28, 2014, characterizing Lloyd's request to add Kyle to the lease as meaning that Lloyd wanted to assign his remaining interest in the lease to Kyle Gusman and stating that we would be in contact with him upon an internal review. See Exhibit C. Lloyd Abreu passed away on September 20, 2014.

By letter dated May 26, 2015 to Kyle (Exhibit D), Daniel Ornellas explained that Lloyd Abreu's request to assign his interest to Kyle was not prepared because of the interest of Ethel Abreu in the lease who was deceased. He stated that Lloyd Abreu was advised that he needed to probate the estate of Ethel Abreu before the lease could be assigned to Kyle Gusman. He stated that "we are now in need of a copy of the Order of Distribution or similar decree from the probate court which authorizes the transfer of the subject lease from the appointed representative of the estate(s) of both Ethel Abreu and Lloyd Abreu to Mr. Gusman."

In 2015, Acting Administrator Kevin Moore had communications with Kyle Gusman's wife, Christy Kajiwar-Gusman, about the lease and suggested that the appropriate parties consider retaining counsel to evaluate and help resolve the various probate, trust, and conveyancing issues of Ethel Abreu, Lloyd Abreu, and perhaps Louis Abreu, as they pertain to the lease.

A copy of Ethel Abreu's last will and testament was personally presented to Kevin Moore on July 22, 2016 by Kyle and Christy Gusman. It has a second circuit court "PRESENTED FOR PROBATE" stamp dated April 9, 2003, but no probate court orders or other court filings have been received by Land Division in regard to Ethel's estate (or the estates of Louis Abreu or Lloyd Abreu). No probate court filings had been received at the Maui Land Office or Honolulu Land Office prior to July 22, 2016.

Kyle and Christy Gusman also presented on July 22, 2016 to Kevin Moore an unsigned letter, partially dated "March\_\_\_, 2016," from David M. Jorgensen, Esq., purporting to assist Kyle Gusman in his request for assignment of the lease to him (Exhibit E). No signed version of the letter has been received at the Maui Land Office or Honolulu Land Office. The attorney requests that Ethel Abreu remain on the lease for the time being because her estate planning documents "are a bit confused, to the extent that anyone even has them." He explains as follows:

For example, there was a probate of Ethel Abreu's estate in Second Circuit Civil Probate No. 03-1-0047(3) and there was an Order Approving First and Final



Accounts and Distribution and Complete Settlement of Estate, filed in that case August 6, 2004. Unfortunately, that Order directs that the "residue" of the Estate, which would include Ethel Abreu's interest in the Lease, be distributed to "Hazel M. Oliveira, Trustee of the Ethel K. Abreu Trust dated July 30, 1991". However, Hazel Oliveira has since passed away and no one that we have been able to locate has found a copy of the Ethel K. Abreu Trust."

Pursuing the probate of Lloyd Abreu's Estate to obtain approval of the Court for the distribution of his interest in the Lease to Kyle should prove less problematic and we are ready to proceed with that probate if the State consents to the request to allow Ethel Abreu's name to remain on the Lease for the time being.

Attorney Jorgensen's unsigned letter gives us an indication that who should receive Ethel's interest in GL 4524 remains unresolved because Mr. Jorgensen has not been able to obtain a copy of Ethel's trust. Land Division has not even seen the probate court order directing her interest in the lease to the trust.

Exhibit F is a letter dated June 15, 2016 presented to Kevin Moore on July 22, 2016 by Kyle and Christy Gusman. Other papers presented were a copy of a notarized letter from Randall Abreu dated December 1, 2014 stating that he is the brother of Lloyd and approves the assignment of GL 4524 to Kyle Gusman (Exhibit G); a copy of the purported will of Lloyd Abreu (Exhibit H); a copy of the purported will of Ethel Abreu mentioned above (Exhibit I); and a copy of the purported trust of Lloyd Abreu (Exhibit J).

A copy of another letter was presented to Kevin Moore on July 22, 2016, which is Exhibit K. It is dated August 29, 2014, signed by Lloyd Abreu, and addressed to Chair Aila. The original letter is not in any of GL 4524's files. However, assuming its authenticity, it does clarify Mr. Abreu's intent. It states, in part, without edits, as follows:

Dear Mr. Aila,

In January of this year I contacted your office both on Maui and Oahu to have My mothers name Ethel K. Abreu, removed from GL S-4524 and add my ranching partner Kyle K. Gusman to the lease agreement.

In response to my request to add on Mr. Gusman I received a letter from a Mr. Daniel Ornellas whom stated that he would look into assigning the remainder of the lease to Mr. Gusman. First of all that was not what we had written for. Secondly, it is now August and my health is failing and I have yet to receive any word form Mr. Ornellas or his office on this matter.

Lloyd Abreu apparently did not want to assign his interest in GL 4524 to Kyle Gusman



but to have his mother's name removed from the lease and add Kyle Gusman to the lease. Lloyd was apparently not aware that without a resolution of Ethel's estate, she could not simply be removed as lessee and replaced with Kyle Gusman.

Kyle and Christy Gusman have advanced their own legal interpretation of the estates, wills, and trusts of Lloyd Abreu and Ethel Abreu, arguing that through the trusts Kyle Gusman should be assigned GL 4524. Kyle's letter states that Ethel Abreu's estate was approved and finalized on August 6, 2004, and that Daniel Ornellas received a copy of the probate documents on October 15, 2014. Neither Daniel nor the Honolulu Land Office has received any probate court orders in regard to this lease. There are no probate court orders in the GL 4524 files on Maui or in Honolulu. Furthermore, if we assume the accuracy of the information contained in the unsigned letter of David Jorgensen, Esq., Ethel's trust document has not been located and therefore who her interest in the lease should go to is unresolved.

Neither Lloyd's will nor Lloyd's trust makes any specific reference to GL 4524. As far as staff knows, Lloyd in his lifetime never conveyed his interest in GL 4524 to himself as trustee of his trust.

In Lloyd's will the following is provided under "SIXTH: Disposition of Residue of Estate":

(1) All the rest, residue and remainder of my estate, both real and personal and of whatever kind and wherever situated, I give, devise and bequeth [sic] to the individual or bank then acting as Trustee under that certain Trust Agreement designated as the Lloyd F. Abreu Revocable Trust signed earlier this day and bearing the same date as this Will, of which I am the Trustor and Trustee, to be combined with the other assets of the trust and held, administered and distributed as a part of that trust, according to the terms thereof and any amendments made to it prior to my death. It is my intent, if it be permissible, not to create a separate trust by this Will and not to subject the Lloyd F. Abreu Revocable Trust or the property added to it by this Subparagraph (1) to the jurisdiction of the probate court.

A probate of the will would determine whether Lloyd's interest in GL 4524 is to be distributed under the terms of Lloyd's trust. Randall Abreu is named as the executor in Lloyd's will and as successor trustee in Lloyd's trust. Randall is also Lloyd's beneficiary under Lloyd's trust. Land Division has been advising the Gusmans that Lloyd's estate must be probated. As David Jorgensen, Esq., stated in his unsigned letter, "Pursuing the probate of Lloyd Abreu's Estate to obtain approval of the Court for the distribution of his interest in the Lease to Kyle should prove less problematic and we are ready to proceed

with that probate ...." Yet, Randall Abreu and Kyle Gusman have not pursued probating Lloyd Abreu's estate and the lease expires by its own terms in a few days.<sup>1</sup>

Kyle Gusman refers to the "Cases of Blanche and Beatrice Soga" involving General Leases Nos. S-5304 and S-5305 in support of his request for the assignment of the lease to him. These leases are located at Kahana Valley State Park and, per the statements in a circuit court order, involve a lease provision requiring that the Lessee designate a successor to the lease on a form attached to the lease. There is no such provision or successor designation form in GL 4524.

### DEFAULT STATUS

Additionally, as of the writing of this submittal, the lessees are in default of the lease for failing to keep rental payments current and failing to post the required liability insurance. A Notice of Default dated May 6, 2016 was mailed to Ethel and Lloyd Abreu, which was received and signed for by Kyle Gusman on June 1, 2016 as "Agent."

### CONCLUSION

This lease expires on its own terms on August 31, 2016. It looks like Ethel's estate may never be completely settled. We have no information on Louis' estate. And there has been great reluctance to probate Lloyd's estate. Additionally, GL 4524 is currently in default.

At this point, the personal representative of Ethel's estate may be able to request an extension of the lease, but if Ethel's trust cannot be found, no assignment of the lease can be made of her interest unless there is a court order directing an assignment. Furthermore, the lease expires in a few days.

However, no personal representative of Ethel Abreu's estate has come forward. And even if the personal representative did come forward to request an extension, that personal representative must run the pasture business and be responsible for complying with all terms of the lease, including lease rent, indemnity, and insurance. To get the extension the defaults must be cured and other requirements for the extension complied with. Section 171-36(b), HRS, provides as follows:

(b) The board, from time to time, upon the issuance or during the term of any intensive agricultural, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease, may:

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1\_/ Relevant provisions from the Uniform Probate Code, Chapter 560, HRS, are attached as Exhibit L.

- (1) Modify or eliminate any of the restrictions specified in subsection (a);
- (2) Extend or modify the fixed rental period of the lease; provided that the aggregate of the initial term and any extension granted shall not exceed sixty-five years; or
- (3) Extend the term of the lease,  
to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with any federal mortgage lending agency, to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the State, or any loan in which the State and any private lender participates, or to amortize the cost of substantial improvements to the demised premises that are paid for by the lessee without institutional financing, such extension being based on the economic life of the improvements as determined by the board or an independent appraiser; provided that the approval of any extension shall be subject to the following:
  - (1) The demised premises have been used substantially for the purpose for which they were originally leased;
  - (2) The aggregate of the initial term and any extension granted shall not be for more than sixty-five years;
  - (3) In the event of a reopening, the rental for any ensuing period shall be the fair market rental at the time of reopening;
  - (4) Any federal or private lending institution shall be qualified to do business in the State;
  - (5) Proceeds of any mortgage or loan shall be used solely for the operations or improvements on the demised premises;
  - (6) Where improvements are financed by the lessee, the lessee shall submit receipts of expenditures within a time period specified by the board, otherwise the lease extension shall be canceled; and
  - (7) The rules of the board, setting forth any additional terms and conditions, which shall ensure and promote the purposes of the demised Lands.



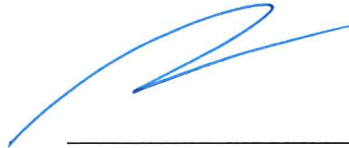
Under the circumstances, including the expiration of the lease in five days, staff cannot recommend an assignment of GL 4524 to Kyle Gusman and cannot recommend consideration of an extension of the lease.

RECOMMENDATION:

That the Board:

1. Based on the above discussion, deny Kyle Gusman's request for an assignment of Ethel Abreu's or Lloyd Abreu's interest in General Lease S-4524 to him and deny any extension of the lease; and
2. Allow General Lease S-4524 to expire on its own terms so that the Board may consider a new disposition of the land.

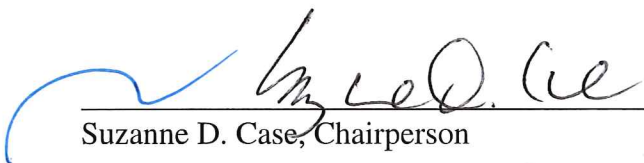
Respectfully Submitted,



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Russell Y. Tsuji  
Land Division Administrator

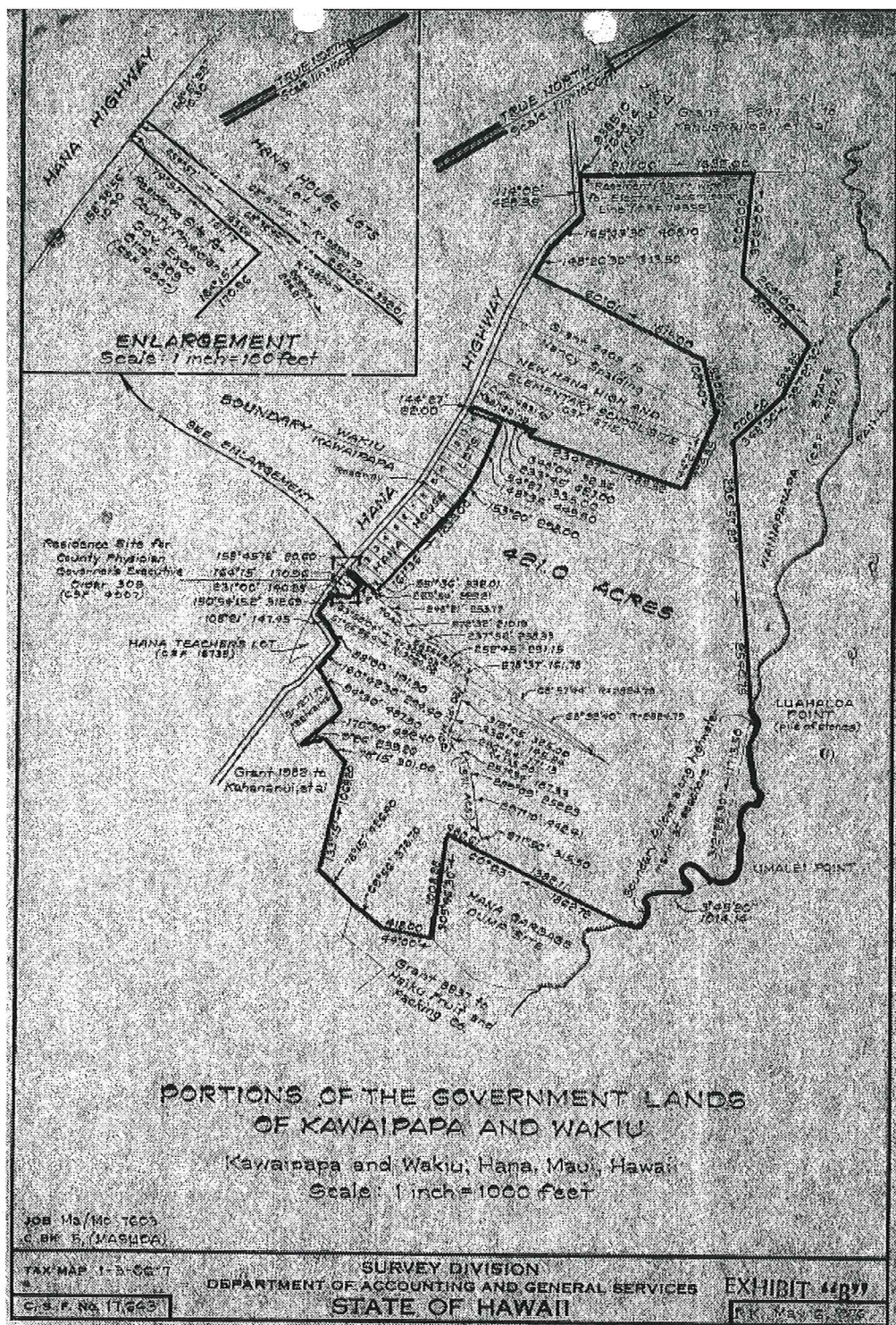
APPROVED FOR SUBMITTAL:



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Suzanne D. Case, Chairperson







4524

January 9, 2014

William Alia  
Director  
State of Hawaii  
Department of Land and Natural Resources

RE: Renewal of General Lease No. S-4524  
State of Hawaii and Hazel Oliveira (Widow) and Louis J. Abreu (Husband of  
Ethel K. Abreu) dba H&E Ranch

RECEIVED  
LAND DIVISION  
2014 JAN 13 AM 10:2  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Covering Portions of the Government lands at Kawaipapa and Waikiu, Hana, Maui, Hawaii

T.M.K. 1-3-06-7

Dear Sir:

I wish to renew the above noted lease for the purposes agreed to in the agreement between the State and my family Louis and Ethel Abreu and Hazel Oliveira on January 10, 1977 .

I am the oldest son of Louis and Ethel Abreu who have both since died. Since their passing, I have maintained the premises according to the terms of the agreement and wish to continue the lease of the premises for agriculture purposes only.

I would also like to add my very close friend and partner Kyle Kimokeo Gusman to any future lease or leases because of my partial disability. He has been instrumental in sustaining and maintaining our agricultural endeavors in a major way.

Thank you.

Sincerely,

*Lloyd F. Abreu*

Lloyd F. Abreu

Haiku, Hawaii 96708

*Kyle Kimokeo Gusman*

KYLE KIMOKEO GUSMAN

WAILUKU HI 96793

Subscribed and sworn to before me, this  
Date: 1/9/14 # Pages: 1

Letter to DLNR

*Amanda B. Patoc*

Amanda B. Patoc

Notary Public, State of Hawaii

4/23/2017



EXHIBIT "B"

1.13.14 cy: MDLO



NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

54 High Street, Room 101  
Wailuku, Hawaii 96793  
PHONE: (808) 984-8103  
FAX: (808) 984-8111  
January 28, 2014

TO: Central  
FROM: L. Abreu  
WILLIAM J. AILA, JR. GL-4524  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

GL S-4524

Mr. Lloyd F. Abreu

Haiku, HI 96708

Dear Mr. Abreu,

SUBJECT: Request to Assign Interest in General Lease No. S-4524 from L. Abreu to K. Gusman for Pasture Purposes, Kawaipapa and Wakiu, Hana, Maui, TMK (2) 1-3-006:007

We are in receipt of your notarized request, dated January 9, 2014, to assign your remaining interest in General Lease No. S-4524 to Kyle K. Gusman for pasture purposes.

We will be in contact with you regarding this request as our internal review of your request relative to provisions of HRS 171-36, Lease Restrictions, and related Board Policies are conducted.

If you have any questions, please feel free to contact me at the Maui District Land Office at (808) 984-8103.

Aloha,

A handwritten signature in black ink, appearing to read "Daniel Ornellas".

Daniel Ornellas  
District Land Agent

cc: Land Board Member  
K. Gusman,  
Central / District files

EXHIBIT "C"

DAVID Y. IGE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

54 High Street, Room 101  
Wailuku, Hawaii 96793  
PHONE: (808) 984-8103  
FAX: (808) 984-8111

May 26, 2015

FROM: MULO  
No. GL-4524  
SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

Ms. Ethel K. Abreu (deceased)  
Mr. Lloyd F. Abreu (deceased)  
Attn: Personal Representative(s) of the Abreu Estate(s)

GL S-4524  
14MD-020

Haiku, HI 96708

Mr. Kyle Gusman

Wailuku, HI 96793

Dear Interested Parties,

SUBJECT: Request for the Consent to Assignment of General Lease No. S-4524 from Ethel and Lloyd Abreu to Kyle Gusman; Wakiu-Kawaipapa, Hana, Maui; TMK (2) 1-3-006:007

This letter serves to advise the interested parties of the next steps that need to be completed in order to allow for the processing of the subject request to assign lease interest in GL S-4524 from Ethel and Lloyd Abreu to Kyle Gusman.

By letter dated January 28, 2014 from the State Department of Land and Natural Resources (DLNR), Maui District Land Office, to Lloyd Abreu, the State recognized the intent of Lloyd Abreu to assign his interest in GL S-4524 to Kyle Gusman. However, the request was not promulgated because the lease was also encumbered by previously deceased co-tenant Ethel Abreu. Lloyd Abreu was advised that he needed to probate the estate of Ethel Abreu before the lease could be assigned to Kyle Gusman as requested. To date, the State has not received any report related to distribution of assets of Ethel Abreu pursuant to the findings of the Probate Court.

As a result, we are now in need of a copy of the Order of Distribution or similar decree from the probate court which authorizes the transfer of the subject lease from the appointed representative of the estate(s) of both Ethel Abreu and Lloyd Abreu to Mr. Gusman. We are unable to process the subject request through the Board of Land and Natural Resources until this document is received. Should you have any questions, you may contact me at the Maui District Land Office at 984-8103.

Aloha,

A handwritten signature in black ink, appearing to read "Daniel Ornellas".

Daniel Ornellas  
District Land Agent

Enc.

cc: Central / District Files

**EXHIBIT "D"**

Joseph L. Wildman  
Eve M. Green  
Of Counsel

# TAKITANI, AGARAN & JORGENSEN

A Law Partnership

March \_\_, 2016

## VIA HAND-DELIVERY

DANIEL ORNELLAS  
District Land Agent  
State of Hawaii DLNR  
54 High Street, Room 101  
Wailuku, Maui, Hawaii 96793

Re: Request for Consent to Assignment of General Lease No. S-4524 from Lloyd Abreu to Kyle Gusman; Wakiu-Kawaipapa, Hana, Maui; TMK No. (2) 1-3-006-007

Aloha Mr. Ornellas:

As you know, this office is assisting Kyle Gusman concerning his request for consent from the State for the Assignment of General Lease No. S-4524 for the property located in Wakiu-Kawaipapa, Hana, Maui, being TMK No. (2) 1-3-006-007 (the "Lease"), to Kyle.

Following up on our recent conversation, on behalf of Kyle Gusman, we hereby request that the DLNR consent to the assignment of the Lease from Lloyd Abreu to Kyle and that Ethel Abreu's name be permitted to remain on the Lease for the time being, even though she has passed away. My client understands that this is contrary to the request made in your May 26, 2015 letter on this subject, but we respectfully submit favorable review of this request would be appropriate under the circumstances.

The primary reason for the request is that the estate planning documents for Ethel Abreu are a bit confused, to the extent that anyone even has them. For example, there was a probate of Ethel Abreu's estate in Second Circuit Civil Probate No. 03-1-0047(3) and there was an Order Approving First and Final Accounts and Distribution and Complete Settlement of Estate, filed in that case August 6, 2004. Unfortunately, that Order directs that the "residue" of the Estate, which would include Ethel Abreu's interest in the Lease, be distributed to "Hazel M. Oliveira, Trustee of the Ethel K. Abreu Trust dated July 30, 1991". However, Hazel Oliveira has since passed away and no one that we have been able to locate has found a copy of the Ethel K. Abreu Trust.

Pursuing the probate of Lloyd Abreu's Estate to obtain approval of the Court for the distribution of his interest in the Lease to Kyle should prove less problematic and we are ready to proceed with that probate if the State consents to the request to allow Ethel Abreu's name to remain on the Lease for the time being.

Please let us know if you need any additional information and we thank you in advance for your consideration of this matter.

Sincerely,

DAVID M. JORGENSEN  
Dave/Letters/Gusman/Daniel Ornellas

c: Client (via e-mail)

**EXHIBIT "E"**



Circle L Ranch LLC  
c/o Kyle K Gusman  
Wailuku, Hawaii 96793

June 15, 2016

State of Hawaii - Land Division Board  
of Land and Natural Resources 1151  
Punchbowl Street Suite 220  
Honolulu, Hawaii 96813  
Fax: (808) 312-6357

RE: GL S-4524  
Wakiu, Kawaipapa, Hana Maui Hawaii  
TMK : {2} 1-3-006-007

Dear Members of the Board,

My name is Kyle Kimokeo Gusman, owner operator of Circle L Ranch LLC. We are involved cattle ranching and farming on the island of Maui. Our operation is primarily operated out of the leased property listed above. We are writing today to humbly request the Board of Land and Natural Resources review our request to transfer, and extend the above said lease for pasture purposes as previously done by my ranch partner Lloyd F Abreu. The Maui District Land agent has been uncooperative in assisting us with bringing this matter before you for your review.

**Under *HRS 171-36(a) (5) No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board of land and natural resources, the assignment and transfer of a lease or unit thereof may be made in accordance with current industry standards, as determined by the board.***

I have been assisting Mr. Abreu with care, maintenance and operation of Circle L Ranch since 1990. Over the past 5 years since 2011, we, Mr. Lloyd F. Abreu (deceased) my wife, and myself, have had numerous verbal, written and email correspondence with the Maui District Land agent, Mr. Daniel Ornellas, to add myself, Kyle K Gusman as a co-tenant on to the above said lease to no avail.

The lease, originally assigned to Hazel Olivera and Louis J. Abreu (husband of Ethel K Abreu) upon the passing of Louis J Abreu was transferred to Ethel K Abreu and Hazel Oliveira. In May of 2002 Hazel Oliveira signed her interest in above said lease to Lloyd F. Abreu (Unmarried) all of whom have since passed away.

**EXHIBIT "F"**

In January of 2011, Mr. Abreu became ill and was no longer able to work, in order to keep the cattle operation going I along with my wife took over ranching operation including payments on the lease agreement, insurance, water, and other necessary financial obligations. We then went in to see Mr. Ornellas who reassured us that due to the county of Maui Dept. Of Environmental Managements recent submission for a withdrawal of 45 acres for the Hana Maui Landfill, he would see to it that the changes were made at that time and the requests would be submitted before the BLNR in conjunction with the request for the landfill. The landfill request was submitted and approved on May 13, 2011 with no mention of adding me to the lease.

On January 9, 2014 Mr. Abreu wrote a certified/notarized letter to BLNR Chair William Aila to notify the Board of his partial disability and made the request to have me added on to the lease. According to the provisions of the lease as stated on page 6, Paragraph 13 (1) Transfer of this Lease may be made if (1) the Lessee becomes mentally or physically Disabled, (2) extreme economic hardship is demonstrated to the satisfaction of the lessor. Mr. Abreu notified Maui District Land Agent Ornellas, and Chair Aila, both of his partial disability and the loss of his employment. Both of which were valid reasons to have the lease transferred, however Mr. Ornellas refused to submit documents to the BLNR for review.

In the correspondence from Maui District Land agent Daniel Ornellas dated May 26, 2015, has requested that we submit an "Order of Distribution" from a probate court which authorizes the transfer of the lease from both Ethel K Abreu and Lloyd Abreu to Kyle K Gusman.

The probate of the Estate of Ethel K Abreu (P. NO. 03-1-0047) was approved and finalized on August 6, 2004. Mr. Ornellas received a full copy of the probate documents via hand delivery by my wife Christy K Gusman on or about October 15, 2014. The lease is covered in the "*Disposition of the Residuary of the Estate*" which in the Estate of Ethel K Abreu was to be settled by her Successor Trustee/Personal Representative Hazel Oliveira, in the event Mrs. Oliveira was unable to do so as according to "Article Sixth" the appointment went to Lloyd F Abreu. Mrs. Oliveira passed away in June of 2014 making Mr. Abreu's request to chairman William Aila on August 29, 2014 valid as successor trustee to the Estate of Ethel K Abreu.

Sadly and suddenly Mr. Lloyd Abreu also passed away on September 20, 2014. Mr. Abreu had a recorded living trust agreement, which under Hawaii Statute 560, is not required to go through probate. The assets of the estate are allowed to be distributed by the Trustee. The Trust documents also covers the lease in "Article Six" of the Last will and testament of Lloyd F Abreu, and the Trust documents which state "rest, residues, and remainder to the Estate both Real and Personal" is to be distributed by his successor trustee Brother Randall J. Abreu.

The Successor trustee is authorized to distribute assets of the estate with out going through the probate process. On December 1, 2014 Randall J Abreu Successor Trustee to the Estates of Ethel K Abreu and Lloyd F Abreu wrote the DLNR a notarized letter of consent to assign GL S-4524 to me, Kyle K Gusman.



We believe that in accordance with ***HRS 171-36(a)5 - the assignment and transfer of a lease or unit thereof may be made in accordance with the current industry standard, or as determined by the board.***

It should be up to the Board to decide. The job of the Maui district land agent (Daniel Ornalles) is simply to act as a liaison between the public and the board he is not an attorney, and does not have the power to decide what he "thinks" the board will say. His job it to submit our requests and let the board decide.

We have many case references but in particular

The Cases of Blanche and Beatrice Soga.

GL-S 5304 and GL-S 5304:

After both Mr. Soga's passed away the Wives who were named successors Sued the State. The court Ruled that **Haw.Rev.Stat. 171-36(a)5 Authorizes the Board to approve the assignment pursuant to the terms of the lease.**

We would like to also raise your awareness to the fact that the island of Maui has many agriculture properties / pasture lands that should be available to the public for lease. We along with other farmers and ranchers in Maui County find it odd that there has not been a lease available or issued in over 15 years.

We have also applied for assistance with USDA and their EQUIP program, which would assist us in compliance with better farm planning, good husbandry, and conservation, requirements of the lease agreement, however with out the lease officially being under the Circle L Ranch LLC Business we are unable to get assistance for this property at this time.

Attached are all supporting documents. If this request is approved by the BLNR we are able to immediately bring the rent payments current and up to date in full. We would like to thank you again for your quick attention to this matter as the current lease expires on August 31, 2016. We humbly pray and request your consideration in this matter and look forward to a positive outcome. Should there be any questions please do not hesitate to contact me at the number listed below.

Sincerely,



Kyle Kimokeo Gusman  
Circle L Ranch LLC



State of Hawaii  
Department of Land ☐ Natural Resources  
P.O. box 621  
Honolulu, Hi. 96809

re: GL S-4524

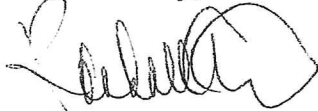
December 1, 2014

To Whom It May Concern,

As brother of the late of Lloyd Abreu, I am acknowledging the request for the assignment of the above lease for pasture purposes at Kawaipapa and Wakiu, Hana, Maui, TMK (2) 1-3-006:007.

I am in approval of the assignment of this lease No. S-4524 to be given to Kyle L. Gusman of Wailuku, Maui.

Sincerely,



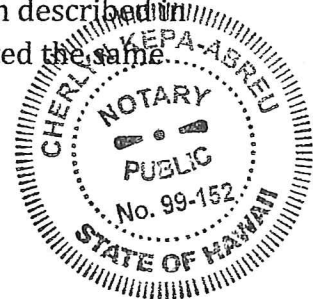
Randall Abreu

Kula, Hi. 96790


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STATE OF HAWAII	)	
	)	SS.
COUNTY OF MAUI	)	

On this 1st day of December, 2014, appeared Randall Abreu to me personally known to be the person described in and/or satisfactorily proved to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.



Doc. Date: 12/1/14 # Pages: 1  
Cherlyn Kepa-Abreu Second Circuit  
Doc. Description Transfer of lease

  
\_\_\_\_\_  
Notary Public, State of Hawaii  
Printed Name: Cherlyn Kepa-Abreu

My commission expires: 04/11/2015

  
\_\_\_\_\_  
Notary Signature Date  
NOTARY CERTIFICATION

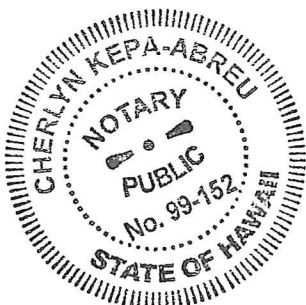


EXHIBIT "G"

**LAST WILL and TESTAMENT**

**of**

**Lloyd F. Abreu**

**I, Lloyd F. Abreu**, a resident of the County of Maui, State of Hawaii, do make and declare this to be my Will and I revoke all my prior Wills and Codicils.

**FIRST: Declaration Concerning Family.** I declare that I am not married and I have one brother, Randall J. Abreu and one sister, Bernadette Gentry.

**SECOND: Nomination and Appointment of Executor.** I hereby nominate and appoint Randall J. Abreu to be my Executor hereunder, to serve without bond. The term "Executor" as used herein shall apply regardless of gender.

**THIRD: Last Illness and Funeral Expenses; Powers of Executor.** I direct my Executor to pay my last illness and funeral expenses. I authorize my Executor to receive and retain any of my property; to sell, at public or private sale, encumber or lease any property of my estate without notice, at such prices, and upon such terms as she deems best, and without the giving of any bond, subject, however, to such confirmation as may be required by law; to hold, manage and operate such property; to continue the operation of any business of my estate, alone or in partnership with others, for such times and in such manner as deemed advisable, or to sell or liquidate such business, and any such operation, sale or liquidation shall be at the risk of my estate and without liability on my Executor for any losses resulting therefrom; to invest and reinvest surplus moneys in such investment as she deems advisable; to determine what is principal and what is income of my estate and to allocate and charge to either principal or income any debts, taxes, and expenses of administration.

**FOURTH: Disposition of All Property; Exercise of Power of Appointment.** It is my intention by this will to dispose of my property. I do not intend hereby to exercise any power of

appointment which I have arising from the Trust Agreement described hereinafter in Paragraph **SIXTH**.

**FIFTH: Disposition of Personal Effects.** Except as provided in any written instructions to my Executor regarding the disposition of personal effects, I give any interest I may have in all personal automobiles, clothing, jewelry, china, silver, books, pictures and other works of art, household furniture and furnishings and all other items of domestic, household or personal use to the Trustee of that Trust Agreement described in Paragraph **SIXTH**. The bequests made by this paragraph shall be free and clear of estate and inheritance taxes, which I direct my Executor to charge against the residue of my estate.

**SIXTH: Disposition of Residue of Estate**

(1) All the rest, residue and remainder of my estate, both real and personal and of whatever kind and wherever situated, I give, devise and bequeth to the individual or bank then acting as Trustee under that certain Trust Agreement designated as the Lloyd F. Abreu Revocable Trust signed earlier this day and bearing the same date as this Will, of which I am the Trustor and Trustee, to be combined with the other assets of the trust and held, administered and distributed as a part of that trust, according to the terms thereof and any amendments made to it prior to my death. It is my intent, if it be permissible, not to create a separate trust by this Will and not to subject the Lloyd F. Abreu Revocable Trust or the property added to it by this Subparagraph (1) to the jurisdiction of the probate court.

(2) If for any reason the disposition in Subparagraph (1) is not operative or is invalid, or if the trust referred to in Subparagraph (1) fails or has been revoked, then I give the rest, residue and remainder of my estate to the individual or bank which would have been Trustee of such trust had such trust been operative, valid and unrevoked at my death, to be held, administered and distributed under the terms and conditions of the Lloyd F. Abreu Revocable Trust signed earlier this day and bearing the same date as this Will, which trust is incorporated herein by



trust is incorporated herein by reference.

(3) Anything else herein to the contrary notwithstanding, should any portion of such trust be terminable upon my death, the disposition made in this Paragraph **SIXTH** shall be made directly to the beneficiaries for whom the outright distribution from the trust shall be made, and the remainder which will remain in such trust, if any, shall pass into such trust under the provisions of Paragraph **SIXTH** (1) or (2), as the case may be.

(4) Should the Trustee of that trust described in Paragraph **SIXTH** (1) AND (2) elect not to pay any or all of the estate, gift or inheritance taxes from such trust, then, to the extent they are not so paid, all taxes levied by the United States or any state, district, territory or possession thereof upon or because of any property passing under this Will or any Codicil thereto or by reason of any transfer or gift made by me during my lifetime or at my death, or which may be imposed by reason of my death, or the acquisition of property by any person upon my death by succession, inheritance, survivorship or otherwise, shall be paid out out of the residue of my estate as an expense of administration. My Executor is authorized to accept any distributions from the Trustee of that trust described in Paragraph **SIXTH** (1) or (2) for purpose of such payment.


**SEVENTH: Omitted Heirs; Will Contests:** If any beneficiary under this Will or heir at law of mine or persons claiming through any of them shall contest or otherwise challenge the validity of this Will or attack any of its provisions or the trust described in Paragraph **SIXTH** herein, directly or indirectly, any share or interest in my estate given to such person under this Will is hereby revoked, and such share or interest shall be distributed in the same manner provided herein as if such person had predeceased me.

**EIGHTH: Partial Invalidity.** Should any part, clause, provision or condition of this Will be held to be void, invalid or inoperative, then I direct that such invalidity shall not affect any other provision hereof, which shall be effective as though such invalid provision had not been made.

*Lloyd F. Abreu*  
Lloyd F. Abreu

The testator then signed this will in our presence, all of us being present at the same time.

We understand that this instrument is the testator's will, and we now subscribe our name as witnesses.

Signature  Print Name Kyle Gasman  
Date Jan 8<sup>th</sup> 2019  
Residence Address \_\_\_\_\_

Residence Address \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Signature *Christy Katigara Gusman* Print Name CHRISTY KATIGARA GUSMAN  
 Date JANUARY 08, 2014  
 Residence Address \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 WAILUKU 96793

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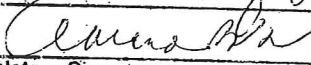
WITNESS my hand and official seal.



Notary Public

Name: Amanda B. Patoc

My commission expires: 1/23/2017

Document Date:	<u>1/8/2014</u>	# Pages:	<u>5</u>
Notary Name:	<u>Amanda B. Patoc</u>	<u>2nd</u>	Circuit
Doc. Description:	<u>Last will and Testament of Lloyd F. Abreu</u>		
Notary Signature		<u>1/8/2014</u>	Date



P. No. 03-1-0047 (3)

PRESENTED FOR PROBATE  
APR -9 2003

LAST WILL AND TESTAMENT

/sgd/ J. Kaya  
CLERK, SECOND CIRCUIT COURT

OF

ETHEL K. ABREU

I, ETHEL K. ABREU, a resident of the State of Hawaii, being of sound and disposing mind and memory, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all other wills and codicils by me heretofore made.

ARTICLE FIRST: I declare that I am a widow. I have four children namely: LOUIS D. ("RUSTY") ABREU, BERNADETTE ABREU, LLOYD F. ABREU and RANDALL J. ABREU.

ARTICLE SECOND: I direct my Personal Representative, hereinafter named, to pay out of my residuary estate and out of funds received from the successor Trustee of the Trust Estate created by that certain Declaration of Trust executed this date but prior to this Will, wherein I am both the Settlor and initial Trustee, my just debts, funeral and administration expenses and all estate, inheritance taxes and generation skipping taxes (including interest and penalties thereon) imposed by the United States or any state, territory or possession thereof by reason of my death, whether or not measured by property passing under this Will, other than taxes imposed by reason of my possession of any unexercised power of appointment. My said trust agreement provides for the discretionary payment to my Representative, from certain types of assets which may be included in the trust estate created by said Trust, of such amount as my Representative shall

I hereby certify that this is a true and correct copy of the Original.

J  
Clerk, Circuit Court, Second Circuit

cha  
**EXHIBIT "I"**

request and the Trustee shall approve for the payment of the aforesaid expenses and taxes and I direct that my Representative deliver an appropriate request to said Trustee after the date of my death if funds shall be necessary for any of the aforesaid purposes.

ARTICLE THIRD: I give and devise my tangible personal property, other than money, evidence of indebtedness, documents of title and securities to those persons specified in a written list prepared and signed by myself prior to execution of this will. It is my intention to add to, and/or amend said list from time to time pursuant to Section 560:2-513 of the Hawaii Revised Statutes and I direct my Representative to secure such list and carry out distribution of my personal property in accordance therewith. Any and all personal property not effectively disposed of pursuant to such list shall be added to my residuary estate and be distributed pursuant to Article Fourth herein.

ARTICLE FOURTH: I give and devise all of the rest, residue and remainder of my estate, real, personal and mixed, wheresoever situated and of whatsoever kind, including any property over which I may possess a power of appointment by will or otherwise, to the successor Trustee of the above referenced Trust, to be added to the principal of the Trust Estate created by said Trust and to be governed by the terms and conditions thereof, including any future amendments which may be made thereto.

ARTICLE FIFTH: In the event that the above referenced Trust shall not be in existence for any reason whatsoever, I

Eka

incorporate the terms of said Trust into this Will by this reference and give the remainder of my estate to the successor Trustee named in that Agreement, to be held, managed and distributed in accordance with the terms of that Agreement.

ARTICLE SIXTH: I nominate and appoint HAZEL OLIVEIRA, to be my Personal Representative, and I direct that she serve in such capacity without bond and with all of the rights and powers subject to all the obligations and responsibilities conferred or imposed upon appointed personal representatives by the law of the State of Hawaii at the time of my death, including, without limitation, the power to sell, convey and convert into cash the whole or any part of my estate consisting of real property. In the event HAZEL OLIVEIRA is unable or unwilling to serve as aforesaid, I nominate and appoint LLOYD ABREU, as my Personal Representative, to serve without bond.

I authorize and empower my Personal Representative, without first selling personal property and without securing either the prior or subsequent approval of any court, to sell and convey any or all of the real property (excluding my home at 655 Lilikoi Road, Haiku, Hawaii) and personal property forming part of my estate, other than property specifically devised or bequeathed by this Will or by any codicil hereto, at either private or public sale, at such prices and on such terms,

Eka



including provisions for the postponement of payment and the  
securing of balances by mortgage, or otherwise as my  
Representative(s) shall determine.

The foregoing instrument is subscribed by me on the  
30<sup>th</sup> day of July, 1991.

Ethel K. Abreu  
ETHEL K. ABREU

The foregoing instrument, consisting of this and four  
(4) other pages initialed by the Testatrix, was subscribed on the  
date indicated, and at the time of subscribing was declared by  
the Testatrix to be her Last Will and Testament. The  
subscription and declaration were made in our presence, we being  
present at the same time; and we, at her request and in her  
presence have affixed our signatures hereto as witnesses.

Kristi L. Baraban Residing at Pukalani, Hi  
Elizabeth A. Sney Residing at Pukalani, Hi

eka



STATE OF HAWAII

)  
) SS.  
)

COUNTY OF MAUI

We, ETHEL K. ABREU, KRISTI L. BARLAHAN and ELIZABETH A. IVEY, the testatrix and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testatrix signed and executed the instrument as her last will, that she signed willingly or directed another to sign for her, and that she executed it as her free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testatrix, signed the will as witness; and that to the best of their knowledge, the testatrix was at the time eighteen or more years of age, of sound mind and under no constraint or undue influence.

Ethel K. Abreu  
Testatrix

Kristi L. Barlahan  
Witness

Elizabeth A. Ivey  
Witness

Subscribed, sworn to and acknowledged before me by ETHEL K. ABREU, the testatrix, and subscribed and sworn to before me by KRISTI L. BARLAHAN and ELIZABETH A. IVEY, witnesses, this 30th day of July, 1991.

L.S.

Kelly L. Street  
Notary Public, State of Hawaii  
My commission expires: 6/20/93

DISPOSITION OF PERSONAL PROPERTY

Pursuant to Hawaii Revised Statutes Section 560:2-513, it is my wish that the following described personal property be distributed to the persons indicated. From time to time, I may add or amend the following list and so long as such addition or amendment is accompanied by my signature and dated, such addition or amendment shall be considered valid.

- A. My automobiles to my son, LLOYD ABREU, if living.
- B. My jewelry to my daughter, BERNADETTE ABREU, if living.
- C. Household items are to pass to the devisee of my home.

DATED:

July 30, 1991

Ethel K. Abreu  
ETHEL K. ABREU

## TRUST AGREEMENT

THIS TRUST AGREEMENT made this 8th day of January, 2014 between Lloyd F. Abreu, of the County of Maui, State of Hawaii, herein designated as Trustor, and Lloyd F. Abreu, herein designated as Trustee. The term "Trustee" shall include Co-Trustees.

IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

### ARTICLE I

It is hereby acknowledged that Trustor is unmarried and have one brother, Randall J. Abreu and one sister, Bernadette Gentry.

### TRUST PROPERTY

A. Original Trust Estate. The Trustor hereby transfers to the Trustee, without consideration from the Trustee, the sum of one hundred dollars (\$100.00), receipt of which is hereby acknowledged. The Trustor will be transferring the property described in the attached Exhibit A to trustee, which together with the one hundred dollars (\$100.00) will constitute the initial Trust Estate.

B. Name of Trust. The name of this trust is **The Revocable Trust of Lloyd F. Abreu.**

C. Addition to Trust Estate. Additional property may be added to the trust estate at any time by the Trustor, or by any person or persons, by inter vivos or testamentary transfer. Such additions and title to any property so added may be, but need not be, evidenced by amendment to this agreement or by schedule, deed, assignment, or other writings transferring property to the Trustee. All such original and additional property is referred to herein collectively as the trust estate and shall be held, managed and distributed as herein provided.

### ARTICLE II

### TRUSTOR'S RIGHTS

A. Amendment and Revocation. During the lifetime of the Trustor, this trust may be altered, amended or revoked, in whole or in part, by written instrument signed by the Trustor and filed with the Trustee, and upon any revocation, all such assets shall return to the Trustor free of trust. By way of construction, all property transferred to the trust is separate property of the

**EXHIBIT "J"**



Trustor, and shall remain separate property in this trust. After the death of the Trustor, this trust may not be altered, amended or revoked.

B. Conservatorship or Guardianship. In the event that the Trustor shall be legally declared a Conservatee or a Ward of the court, and the income from the trust shall be insufficient to provide for the proper health, support and maintenance of the Trustor, the Conservator or Guardian of the Trustor shall have the right, with the approval of the appropriate court, to invade the trust for the benefit of the Trustor to the extent that the Trustor could have invaded the trust had the Trustor not been, at that time, subject to a Conservatorship or Guardianship. The power of the Trustor to revoke or amend this trust is personal to the Trustor and shall not be exercisable in the Trustor's behalf by any Conservator or Guardian or other person, except that revocation or amendment may be authorized, after notice to the Trustee, by the court that appointed the Conservator or Guardian.

C. Investment of Trust Estate. While the Trustor is living and competent, the Trustor may, at any time or times, direct the Trustee in writing to invest the trust estate in specific securities, properties or investments, to retain as part of the trust estate any securities, properties or investments for such length of time as such directions may provide, or to sell, encumber, lease, manage, control or dispose of any property of the trust estate. The Trustee shall not be liable for any loss sustained or incurred by reason of compliance by such Trustee with any such written directions of the Trustor.

D. Character of Property. Regardless of the location of such property, any personal property transferred to this trust shall remain personal property, and any real property transferred to this trust shall remain real property.

### ARTICLE III

#### Dispositive Provisions During Trustor's Lifetime

A. Payment of Expenses. The Trustee shall pay or reserve sufficient funds to pay all expenses incident to the establishment, management and administration of the trust estate, including the compensation of the Trustee, all or any part of which may, in the direction of the Trustee, be charged either to income or principal of the trust estate. The remaining income shall be and hereinafter referred to as "net income."

B. Distribution of Income. During the lifetime of the Trustor, the Trustee shall pay to the Trustor, or shall apply for the Trustor's benefit, the net income of the trust in quarter-annual or more frequent intervals.

C. Distribution of Principal. If the Trustee considers the net income insufficient, the Trustee may pay to or apply for the benefit of the Trustor as much of the principal of the trust estate as is necessary, in the Trustee's discretion, for the proper health, education, support, maintenance and comfort of the Trustor, in accordance with the accustomed manner of living of the

Trustor at the date of this instrument. The Trustee shall exercise this power to invade principal in a liberal manner.

#### ARTICLE IV

##### Dispositive Provisions After Death of Trustor

A. Payment of Expenses of Trustor's Estate. On the death of the Trustor, the Trustee may, in the Trustee's discretion, pay, out of the trust, the debts of the Trustor; the estate and inheritance taxes, including interest and penalties, arising because of the Trustor's death; the last illness and funeral expenses of the Trustor; and attorney's fees and other costs incurred in administering the Trustor's estate. The Trustee may pay, any such taxes directly or, alternatively, in the sole discretion of the Trustee, distribute such sums to the Executor as shall be necessary to pay all or any portion of such taxes.

B. Payment of Expenses of Administration. Upon the death of the Trustor, the Trustee shall pay or reserve sufficient funds to pay all expenses of management and administration of the trust estate, including the compensation of the Trustee and the attorney, all or any part of which shall be charged, in the Trustee's discretion, to income and/or principal of the trust estate. The remaining income shall be and is hereinafter referred to as "net income."

C. Distribution Gifts. NONE

D. Distribution of Remainder of Trust Estate. Upon the death of the Trustor, the Trustee shall, after paying or reserving for all amounts payable, as provided in **ARTICLE IV A.** through **C.**, distribute the remainder of the trust estate to **Randall J. Abreu.**

And further that any and all interest held by the Trustee in that certain real property serving as the Trustor's residence at the time of Trustor's death and/or that certain real property located at Haiku, Hawaii 96708 Maui, Hawaii shall be distributed to **Randall J. Abreu.**

E. Distribution of Deceased Beneficiary's Share. In the event that the beneficiary named in Paragraph **D** of this **ARTICLE IV** is not then living, the share of such deceased beneficiary shall be distributed to his or her then living issue by right of representation.

#### ARTICLE V

##### Additional Dispositive Provisions

A. Discretionary Termination. If the value of the trust estate or of segregated share held as a separate trust is determined by the Trustee to be valued at \$20,000 or less, then such trust may, in the discretion of the Trustee, be terminated and the remainder of such trust shall be



distributed to the person then entitled to the income therefrom.

B. Rule Against Perpetuities. Unless sooner terminated in the manner herein before provided, each trust shall cease and terminate one day prior to twenty-one (21) years from the death of the Trustor, or the death of the survivor of the named beneficiaries who are living at the date of death of the Trustor, whichever death shall last occur. Upon such termination, the entire trust estate, including principal and any accrued or undistributed net income thereon, shall be distributed to the persons for whom said trust estate is then held, in proportion to the trusts then held for such persons.

C. Spendthrift Provision. No beneficiary of this trust, other than the Trustor, shall have any right to alienate, encumber or hypothecate his interest in the trust to claims of his creditors, or to render such interest liable to attachment, execution, or other process of law. The income of this trust shall not be pledged, assigned, transferred, sold or accelerated, anticipated or encumbered in any manner whatsoever by any beneficiary, nor shall any income of the trust be in any manner subject or liable in the hands of the Trustee for the debts, contracts or encroachments of any beneficiary or be subject to any assignments or any other voluntary or involuntary alienation or disposition whatsoever. If the creditor of any beneficiary, other than the Trustor, who is entitled to any distributions from a trust established under this instrument shall attempt by any means to subject to the satisfaction of his claim such beneficiary's interest in distribution, then, notwithstanding any other provision herein, until the release of the writ of attachment or garnishment or other process, the distribution set aside for such beneficiary shall be disposed of as follows:

1. Distribution to Beneficiary. The Trustee shall pay to or apply for the benefit of such beneficiary such sums as the Trustee shall determine to be necessary for the reasonable health, education (including study at institutions of higher learning) and support of the beneficiary according to his or her accustomed mode of life.

2. Disposition of Excess. The portion of the distribution that the Trustee shall determine to be in excess of the amount necessary for such health, education (including study at institutions of higher learning) and support shall, in the Trustee's discretion, either be added to and become principal of the trust share of such beneficiary or be paid to or applied for the benefit of the other beneficiaries then entitled to receive payments from any trust established under this instrument, in proportion to their respective interests in the trust estate; or, if there be no other beneficiaries, the excess income may be paid to or applied for the benefit of the person or persons presumptively entitled to the next eventual interest, in proportion to their respective interests.

D. Simultaneous Death. If any beneficiary of the trust shall die simultaneously with the Trustor, or if there is insufficient evidence to establish that such beneficiary and the Trustor died other than simultaneously, it is hereby deemed that the Trustor shall have survived the beneficiary.

## ARTICLE VI



### Trustee's Powers

In addition to all other powers and discretion granted to or vested in the Trustee by law or by this instrument, the Trustee shall have full power to do everything it deems to be in the best interests of the beneficiaries of the trust, including, but not limited to the following powers and discretion:

A. Power to Retain Trust Property and Comply with Existing Agreements. To continue to hold any property received in trust, including undivided interests in real property, and to operate any property or any business received in trust as long as the Trustee, in the Trustee's discretion, may deem advisable, notwithstanding the fact that any or all of the investments retained are of a character or size which, but for this express authority, would not be considered proper for the Trustee. In the event that the Trustor shall be a party to a Buy-Sell Agreement, Cross-Purchase Agreement, Stock Redemption Agreement, Option or any agreement providing for the disposition of Trustor's interest in property, whether such agreement has been executed by Trustor individually or as Trustee of this Trust Agreement, and which property is owned by the trust, then upon death of Trustor, the then acting Trustee of this trust is hereby directed to transfer as much of Trustor's interest in such property then held in the trust as is necessary to carry out the provisions of any such agreement and to execute all documents and take all further actions necessary or appropriate to carry out the terms of such agreement.

B. Power to Manage Trust Property. To manage, control, sell, convey, exchange, partition, divide, subdivide, improve and repair; to grant options and to sell upon deferred payments; to lease for terms within or extending beyond the duration of the trust, for any purpose, including exploration for and removal of oil, gas, and other minerals; to enter into oil, gas, and mineral leases, assignments, farmouts, farmins and joint ventures; to purchase and sell gas, oil and mineral royalties, to create restrictions, easements, and other servitudes; to compromise, arbitrate, or otherwise adjust claims in favor of or against the trust; to institute, compromise and defend actions and proceedings to construct, alter or demolish any buildings; and to carry such insurance as the Trustee may deem advisable.

C. Power to Invest. To invest and reinvest the principal and to purchase or acquire therewith every kind of property, real or personal, and every kind of investment, specifically including, but not by way of limitation, commodities of every nature, corporate obligations of every kind, precious metals such as gold or silver, and stocks, preferred or common, and to buy stocks, bonds, commodities and similar investments on margin or other leveraged accounts and to short sell such accounts, and to buy, sell and write stock and other security options, and to enter into commercial partnership as a partner, limited or general, and to operate any business as a sole proprietor. To open, operate and maintain a securities brokerage account wherein any securities may be bought and/or sold on margin, and to hypothecate, borrow upon, purchase and/or sell existing securities in such account as the Trustee may deem appropriate or useful.

D. Power to Retain Trust Property without Diversification. To retain, without liability for loss or depreciation resulting from such retention, original property, real or personal, at any time received by the Trustee, for such time as the Trustee shall deem best, even though such property may not be of the character prescribed by law or by the terms of this trust for the investment of trust funds, and although it may represent a large percentage of the total trust or estate property, and without being required to observe the principle of diversification of trust investments.

E. Power to Retain Unproductive Property. To retain uninvested all or any part of the trust estate from such time to time, as the Trustee may deem advisable.

F. Power to Borrow. To borrow money for any trust purpose upon such terms and conditions as the Trustee may deem proper, and to obligate the trust estate by mortgage, deed of trust, pledge or otherwise, using such procedure to consummate the transaction as the Trustee may deem advisable and to pledge the assets of the trust estate to secure the guarantee by the Trustor of the debts of third parties.

G. Power to Manage Securities. To have, respecting securities, all the rights, powers and privileges of an owner, including the power to pay assessments and other sums deemed by the Trustee necessary for the protection of the trust estate; to participate in voting trusts, pooling, agreements, foreclosures, recapitalizations, reorganizations, consolidations, mergers, and liquidations, and in connection therewith to deposit securities with and transfer title to any protective or other committee under such terms as the Trustee may deem advisable; to exercise or sell stock subscription or conversion rights, to accept and retain as an investment any securities or other property received through the exercise of the foregoing powers.

H. Power to Partition, Allot and Distribute. Upon any division or distribution of the trust estate, to partition, allot and distribute the trust estate in undivided interests or in kind, or partly in money and partly in kind, at valuations determined by the Trustee, and to sell such property as the Trustee may deem necessary to make division or distribution. The power of the Trustee to make distributions in kind shall include the power to make non-pro rata distributions in kind without regard to the income tax basis of assets so distributed.

I. Power to Determine Principal and Income. Except as otherwise specifically provided in this Trust Agreement, the determination of all matters relating to principal and income and receipts and expenses shall be governed by the provisions of the Uniform Principal and Income Act or similar statute applicable in the State of Hawaii from time to time existing. Any such matter not provided for either in this instrument or in the Uniform Principal and Income Act or similar statute applicable in the state of Hawaii shall be determined by the Trustee in the Trustee's discretion. The Trustee's powers shall be subject, at any time that a beneficiary shall be a Trustee hereunder, to the Trustee's duty to treat income and remainder beneficiaries equitably.

J. Power to Distribute Income. To make payments, if any, of the income of the trust in quarterly or more frequent intervals as may be convenient to the Trustee. Upon the death of



the income beneficiary of the trust during its continuance, any accumulated income which would have paid to such beneficiary had he or she survived shall not be payable to his or her estate but shall be paid to his or her successors in interest in the trust as hereinabove provided.

K. Power to Employ Counsel. To employ counsel and corporate or other agents in the discharge of their duties and to pay them a reasonable compensation out of either income or principal in the Trustee's discretion, and to rely upon the advice of counsel and to suffer no liability resulting from any action taken or withheld pursuant to such advice.

L. Power to Pay Taxes and Expenses Relative to Trust Property. To pay from time to time all taxes, assessments, including corporate assessments, and other charges levied or accruing against or on account of the trust property, and to pay all expenses of the trust, including reasonable compensation to the Trustee. To deduct all said taxes, assessments, charges and expenses from the income or principal of the trust as the Trustee may deem proper, giving consideration to whether it was income or principal or an allocation between them which gave rise to such taxes, charges and expenses.

M. Power to Hold Trust Property in the Name of a Nominee. To take title to any property in its name as Trustee hereunder or in its own name or in the name of a nominee without disclosing the trust, or in the case of securities, to take and keep the same unregistered and to retain them in such manner that title may pass by delivery; or, in the case of real estate, to keep deeds unrecorded; or to deposit cash in a checking or savings account without indication of any fiduciary capacity.

N. Power to Pay taxes. To pay out of the trust shares or income interests giving rise to such taxes, all state, federal and local property taxes, income taxes and all other taxes relating to the trust estate.

O. Power to Lend. To lend money to any person, including the probate estate of the Trustor, provided that any such loan shall be adequately secured and shall bear a reasonable rate of interest.

P. Power to Insure. To carry insurance of such kinds and in such amount as the Trustee deems advisable, at the expense of the trust, to protect the trust estate and the Trustee personally against hazard.

Q. Power to Commence or Defend Litigation and to Compromise. To commence or defend at the expense of the trust, such litigation with respect to the trust or any property of the trust estate as the Trustee may deem advisable, and to compromise or otherwise adjust claims or litigation against or in favor of the trust.

R. Power to withhold Payment Pursuant to Conflicting Claims. To withhold from distribution, in the Trustee's discretion, at the time for distribution of any property in this trust,



without the payment of interest, all or any part of the property, so long as the Trustee shall determine, in the Trustee's discretion, that such property may be subject to conflicting claims, to tax deficiencies, or to liabilities, contingent or otherwise, properly incurred in the administration of the trust estate. The Trustee is under no obligation to make such retentions and shall be under no liability whatever for the exercise or the failure to exercise such discretion. The interests of the beneficiaries hereunder shall be vested regardless of whether or not such assets are so retained, and all income required to be paid shall be payable to such beneficiaries in convenient intervals not less frequently than quarter-annually.

S. Power to Adjust for Tax Consequences. To take any action and to make any election, in the Trustee's discretion in order to minimize tax liabilities of this trust and its beneficiaries or to extend the time for payment of any tax liabilities. The Trustee shall allocate the benefits from such action or election among the various beneficiaries. The Trustee shall make adjustments in the rights of any beneficiaries, or between the income and principal accounts, to compensate for the consequences of any tax election, investment, or administrative decision that the Trustee believes has the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over others.

T. Power to Subject Trust Property to Probate. It is the Trustor's intention to avoid probate through the use of this Trust Agreement. If, however, the Trustee of this trust and the Executor of the estate of Trustor shall mutually determine that it shall be in the best interests of the beneficiary of the trust, and the beneficial interests of the beneficiary shall not thereby be altered, the Trustee may subject any asset to probate to accomplish a result unavailable without probate. This power shall be strictly construed and shall only be used to secure any tax or other benefits unavailable to the trust.

U. Power to Delegate. To perform or to delegate to any trustee or non-trustee any non-discretionary power, including the power to, singularly or jointly open, close or transfer any type of bank account and savings and loan association account, sign checks, drafts, withdrawal slips or other documents, give instructions for the receipt or delivery of securities or other property, give instructions for the payment or the receipt of money and, singularly or with others, have access to any safe deposit box or other place containing property of this trust.

## ARTICLE VII

### Limitation of Powers

A. Management of Principal and Income. No powers, enumerated herein or accorded to Trustee generally by law, shall be construed, to enable any person appointed as Trustee or otherwise, or any other person, to purchase, exchange or otherwise deal with or dispose of the principal or income of this trust for less than an adequate consideration in money or money's worth or to enable any person appointed as Trustee or otherwise to borrow the principal or income of this trust directly or indirectly without adequate interest or security. This limitation shall not apply to a

Trustor acting as Trustee.

## ARTICLE VIII

### RECORDS AND ACCOUNTING

The Trustee shall keep and maintain adequate books and records reflecting all income and principal transactions, which books and records shall be open at all reasonable times to the inspection of the Trustor and to the duly authorized representatives of the Trustor. The Trustee shall furnish at least annual statements for all transactions to the then income beneficiaries of the trust or to the natural or legal guardians of such beneficiaries.

## ARTICLE IX

### Compensation of Trustee

The Trustee shall receive as compensation for its services, unless waived, such amount of commissions as are customarily being charged by commercial trust companies for services as a trustee of an inter vivos trust in the State of Hawaii.

## ARTICLE X

### Successor Trustees

A. Designation of Successor Trustee. Upon the death, resignation or incapacity of **Lloyd F. Abreu** as Trustee, the successor Trustees shall be **Randall J. Abreu**.

B. Powers and Responsibility of Successor Trustee. Upon the appointment of any successor Trustee, such Trustee shall not be required to conduct an audit or account of the fiduciary conduct of any previous Trustee and shall incur no liability whatsoever by its failure to examine the prior trust record. Every successor Trustee shall have all the powers given the originally named Trustee. No successor Trustee shall be personally liable for any act or omission of any predecessor.

C. Guardianship or Conservatorship of Trustee. The establishment of a Guardianship or Conservatorship of the Trustee, whether it is of the Estate or the Person, shall cause the trusteeship of such individual to terminate and to pass to the successor Trustee. Additionally, should two physicians, neither of whom is a beneficiary hereunder, related to the Trustor of the Trustee within the second degree, nor related to any beneficiary of this trust or beneficiary under the Will of the Trustor within the second degree, certify that the Trustee is incompetent to act as Trustee, such trusteeship shall terminate and pass to the successor Trustee upon notification of such certification to the Trustor, the Trustee, and each then income beneficiary. Should the Trustor, Trustee or any income beneficiary object to such certification, such objecting party may seek a legal determination of incompetence in any court of competent jurisdiction.



D. Resignation of Trustee. Any Trustee or Co-Trustee of this Trust Agreement may resign as Trustee after written notice of such resignation is delivered to the Trustor, or, if the Trustor is deceased, to all of the beneficiaries then receiving income interests, and upon the acceptance of the successor Trustee to act. The resignation of a Trustee can be effected by the attorney-in-fact for a Trustee exercising such power pursuant to a valid power of attorney. An accounting of the assets, income and expenses shall be delivered by the resigned Trustee to the successor Trustee as soon thereafter as is reasonably practical.

E. Removal of Trustee. The Trustor shall have full power and authority, at any time or times, to remove the Trustee hereunder and to appoint a successor Trustee, including any corporation or banking institution, and shall do so by delivering to the Trustee to be removed a written notice of such removal, a written appointment of the successor Trustee, and a written acceptance by the successor Trustee. Upon delivery of such instruments to the Trustee, the Trustee shall, after deducting all charges and amounts due it as Trustee, and upon receipt of such proper indemnity as it may require, transfer and deliver the trust estate to the successor Trustee. Thereafter, said removed Trustee shall have no further powers, discretion, rights, obligations or duties with reference to the trust, and all such powers, discretion, rights, obligations or duties given the Trustee by this instrument shall inure to and be binding upon said successor Trustee.

F. Foreign Assets. In the event that the trust shall own real property (hereinafter referred to as "Foreign Assets") in some state other than Hawaii and the Trustee shall hereunder shall be a corporate or individual Trustee not authorized to do business in that state, such corporate or individual Trustee shall select an individual ancillary Trustee located anywhere within the United States of America, providing such individual Trustee shall be legally able to act in such state, or a corporate ancillary Trustee located within the state of the situs of such real property, and such ancillary Trustee shall be vested with, and only with, title to and management of each Foreign Asset, and such ancillary Trustee shall have the same rights and powers over the real property within such state as the regularly appointed Trustee under this trust would have had, had it been able to act as Trustee within that state. The ancillary Trustee shall pay over to the Trustee hereunder, at least annually, the net income attributable to such Foreign Assets. The Trustee selecting such ancillary Trustee shall be held harmless for any wrongdoing on the part of the ancillary Trustee which it shall select. No individual ancillary Trustee may be selected who would, merely through selection as such ancillary Trustee, be subject to estate or inheritance tax on any trust assets upon his or her death.

## ARTICLE XI

### Bond

No Trustee or successor Trustee named herein shall be required to furnish any bond or bonds for the performance of Trustee's duties hereunder.



## ARTICLE XII

### Governing Law

The validity of this trust with respect to real property shall be governed by the state of its situs. The validity of this trust with respect to personal property, and the construction, interpretation and administration of this trust with respect to all property shall be governed by the laws of the State of Hawaii in force from time to time.

## ARTICLE XIII

### Merger

The trust created hereby shall not terminate or be held to have terminated upon any theory of merger based on the fact that the same persons are, by the terms of this instrument, made sole beneficiaries and Trustee of said trust; and said beneficiaries are expressly given the right and privilege to participate in the property and business and the profits, dividends, earnings and increase thereof without regard to the relation as Trustee which such beneficiaries may bear to said trust.

## ARTICLE XIV

### No-Contest Clause

In the event that any beneficiary under this trust shall, singly or in conjunction with any other person or persons, contest in any court the validity of this trust or of the Trustor's Last Will or shall seek to obtain an adjudication in any proceeding, in any court that this trust or any of its provisions, or that such Will or any of its provisions, is void, or seek otherwise to void, nullify, or set aside this trust or any of its provisions, then the right of that person to take any interest given to him by this trust shall be determined as it would have been determined had the person predeceased the execution of this Trust Agreement. The Trustee is authorized to defend, at the expense of the trust estate, any contest or other attack of any nature on this trust or any of its provisions.

## ARTICLE XV

### Validity of Trust Agreement

A. Conflict with Jurisdictional Law. This trust shall be construed in such a manner as to uphold its validity in the event that any provision would otherwise appear to conflict with the law of the jurisdiction governing such trust provision in question.

B. Distribution Required by Court. In the event that any court of competent jurisdiction shall make a final determination that some individual or institution other than a named

beneficiary hereunder is, in fact, to be a recipient of a portion or all of this trust estate, the Trustee shall distribute to such court-determined beneficiary such share as such court shall order, and the Trustee and attorney for the trust shall be absolved from any liability whatever for carrying out such order, and all beneficiaries herein shall be bound by such court order. Should any such court make such a determination after any assets are distributed hereunder, the individual or individuals receiving such assets shall return them to the Trustee for redistribution in accordance with the court order.

C. Violation of law. If the trust created hereunder shall violate any applicable rule against perpetuities, accumulations or any similar rule or law, the Trustee is hereby directed to terminate such trust on the date limited to such rule or law and thereupon, the property held in such trust shall be distributed to the persons then entitled to share in the income therefrom, in the proportions in which they are entitled to share the income, notwithstanding any provision of this trust to the contrary.

D. Exercise of Power of Appointment in Violation of Law. No power of appointment granted hereunder shall be so exercised as to violate any such applicable rule or law, and attempted exercise of any such power which violates such rule or law shall be void, notwithstanding any provision of this trust to the contrary.


E. Headings. The headings, titles and subtitles used herein are for the convenience of reference only and do not form a part hereof and in no way modify, interpret or construe the meanings of the provisions contained herein and shall not affect the construction hereof.

IN WITNESS WHEREOF, Lloyd F. Abreu, TRUSTOR, and Lloyd F. Abreu, TRUSTEE, as evidence of acceptance of the responsibilities of Trustee, hereunder, has signed this Trust Agreement.

TRUSTOR:

  
Lloyd F. Abreu

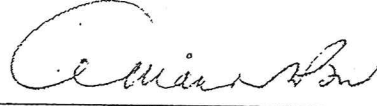
TRUSTEE:

  
Lloyd F. Abreu

STATE OF HAWAII            )  
  ) ss.  
COUNTY OF MAUI        )

B/nd

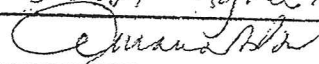
On this date JAN 08 2014, before me personally appeared **Lloyd F. Abreu**, in his capacity as Trustor, and as a Trustee aforesaid, to me known to be person described in and who executed the foregoing instrument and acknowledged that she executed the same as his free act and deed in the capacities set forth above.



Name: Amanda B. Patoc

Notary Public, State of Hawaii

My commission expires: 4/23/2017

Document Date:	<u>1/8/14</u>	# Pages:	<u>15</u>
Notary Name:	<u>Amanda B. Patoc</u> <u>15</u> Circuit		
Doc. Description:	<u>Revocable Trust /</u> <u>Trust Agreement</u>		
Notary Signature		Date	<u>1/8/2014</u>



August 29, 2014

William J. Aila  
Director, State Of Hawaii DLNR  
Kalanimoku Building  
1151 Punchbowl St.  
Honolulu, Hawaii 96813  
(808) 587-0400

RE: Renewal of General Lease No. S-4524  
State of Hawaii and Hazel Oliveria (Widow) and Louis J Abreu ( Husband of  
Ethel K. Abreu) Dbā H&E Ranch now under Ethel K Abreu and Lloyd F.  
Abreu.

Covering portions of the Government Lands at Kawaipapa and Wakiu, Hana,  
Maui, Hawaii.

Dear Mr. Aila,

In January of this year I contacted your office both on Maui and Oahu to have My  
mothers name Ethel K Abreu, removed from GL S-4524 and add my ranching  
partner Kyle K. Gusman to the lease agreement.

In response to my request to add on Mr. Gusman I received a letter from a Mr. Daniel  
Ornelias whom stated that he would look into assigning the remainder of the lease  
to Mr. Gusman. First of all that was not what we had written for. Secondly, it is now  
August and my health is failing and I have yet to receive any word form Mr. Ornelias  
or his office on this matter.

My Mother Passed away on February 4, 2003 and I have been to the Maui office  
numerous times and they have gotten copies of her death certificate and have yet to  
remove her name from the lease.

This is unacceptable and uncalled for and I would like a response from someone  
other than Mr. Ornelias at this point.

Your Quick response and consideration to this matter is greatly appreciated.

Sincerely,

Lloyd F Abreu



Please do the following:-

1. Removal of Ethel K. Abreu
2. Addition of Kyle K. Gusman  
Christy K. Gusman
3. Renewal Process of lease
4. Change of Address

Documents Attached

EXHIBIT "K"

## RELEVANT UNIFORM PROBATE CODE STATUTES

For your information, relevant statutes from the Uniform Probate Code, Chapter 560, HRS, are set forth below.

**§560:3-102 Necessity of order of probate for will.** Except as provided in section 560:3-1201, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the registrar, or an adjudication of probate by the court. [L 1996, c 288, pt of §1]

**§560:3-103 Necessity of appointment for administration.** Except as otherwise provided in article IV, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or registrar, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters. [L 1996, c 288, pt of §1]

**§560:3-105 Proceedings affecting devolution and administration; jurisdiction of subject matter.** Persons interested in decedents' estates may apply to the registrar for determination in the informal proceedings provided in this article, and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in this article. The court has exclusive jurisdiction of formal proceedings to determine how decedents' estates, subject to the laws of this State, are to be administered, expended, and distributed. The court has concurrent jurisdiction of any other action or proceeding concerning a succession or to which an estate, through a personal representative, may be a party, including actions to determine title to property alleged to belong to the estate, and of any action or proceeding in which property distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent. [L 1996, c 288, pt of §1]

**§560:1-302 Subject matter jurisdiction.** (a) To the full extent permitted by the Constitution and except as otherwise provided by law, the court has

jurisdiction over all subject matter relating to:

- (1) Estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons;
- (2) Protection of minors and incapacitated persons; and
- (3) Trusts.

(b) The court has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

(c) The court has jurisdiction over protective proceedings and the family court has jurisdiction over guardianship proceedings.

(d) Where protective and guardianship proceedings relating to the same person have been initiated, they may be consolidated in the court or in the family court as the court and the family court in the exercise of their discretion shall determine. [L 1996, c 288, pt of §1]

**§560:2-511 Testamentary additions to trusts.** (a) A will may validly devise property to the trustee of a trust established or to be established:

- (1) During the testator's lifetime by the testator, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts; or
- (2) At the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust.

The devise is not invalid because the trust is amendable or revocable, or because the trust was



amended after the execution of the will or the testator's death.

(b) Unless the testator's will provides otherwise, property devised to a trust described in subsection (a) is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised, and must be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(c) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse. [L 1996, c 288, pt of §1]