

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

November 9, 2018

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

Ref: GL 4297

OAHU

Forfeiture of General Lease No. S-4297, Miguel A. Ramirez and Valerie S. Ramirez, Lessees, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-010:004.

PURPOSE:

Forfeiture of General Lease No. S-4297, Miguel A. Ramirez and Valerie S. Ramirez, Lessee.

LEGAL REFERENCE:

Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-010:004, as shown on the maps attached as **Exhibit A-1** and **A-2**.

AREA:

14.054 acres, more or less.

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:

For agriculture, general purposes. "Agriculture, General" shall mean the cultivation of truck, orchard, flower or nursery crops and/or the pasturing, keeping, breeding, training and care of horses and cattle but not of swine, sheep and goats.

TERM OF LEASE:

60 years, commencing on March 12, 1970 and expiring on March 11, 2030.

ANNUAL RENTAL:

\$31,480 due on June and December 23rd, every year.

REMARKS:Background

The subject lease was sold at a public auction on March 12, 1970 for a term of 20 years. In 1978, the Board approved an extension for an additional 17 years. When Mr. & Mrs. Ramirez became the lessees pursuant to a foreclosure action in 1995, they obtained another lease extension up to March 11, 2030.¹

Pursuant to the terms and conditions of the subject lease, as extended, the Division conducted a rental reopening effective on June 23, 2015. The annual rent prior to the reopening was \$9,140. The new annual rent for the period covering from June 23, 2015 to June 22, 2025 was appraised at \$31,480 by an independent appraiser procured by the Division.

2015 Rental Reopening

By our letter dated August 19, 2015 (**Exhibit B-1**), the lessees were informed of the new rent. Lessees indicated their rejection of the new rent by their letter dated September 17, 2015 (**Exhibit B-2**) and offered \$10,848.60 as the new rent.

On September 23, 2015 (**Exhibit B-3**), the Division advised the lessees in writing that they have to pay the new rent pending the final determination of the new rent pursuant to the terms and conditions of the subject lease. The relevant section of the lease conditions is: “in the event that the appraisers are unable to determine the fair market rental before the opening date ... the Lessee shall pay the fair market rental as determined by Lessor’s new appraised value until the new rent is determined and the rental paid by the Lessee shall then be subject to retroactive adjustments as appropriate ...”

Further, the lessees’ appraiser was required to provide her appraisal report to us not later than 45 days from September 17, 2015.

Lessees sent a letter dated October 23, 2015 (**Exhibit B-4**) to the Chairperson reiterating their position on the appraised rent. A few days later, Lessees asked for an extension for the submission of a counter-appraisal (**Exhibit B-5**).

¹ Act 174, SLH 1994 allowed lessees to apply, until June 30, 1995, for an extension provided the aggregate of the initial term and any extension does not exceed 65 years.

On November 5, 2015 (**Exhibit B-6**), the Division agreed to extend the deadline for the lessees' appraiser to provide the appraisal report to December 16, 2015. The request was also followed up by the Division's letter dated January 6, 2016 (**Exhibit B-7**).

In response to the lessees' letter dated April 29, 2016 (**Exhibit B-8**), the Division advised the lessees via its letter dated May 3, 2016 (**Exhibit B-9**) that settling the rent dispute without undergoing mediation is not permissible under the statutes.

On May 26, 2016 (**Exhibit B-10**), the Division asked the lessees to select a second mediator, as the first mediator selected had declined the assignment due to conflict of interest.

The subject parcel has been transferred to the Department of Agriculture ("DOA") pursuant to Act 90, Session Laws of Hawaii 2003 in October 2017. Subsequently, DOA informed us that they will not accept the subject lease due to the rental delinquency. Therefore, Land Division continues to be the agency handling the subject lease, until the lease is in full compliance and is transferred to DOA.

Notice of Default

Pursuant to the authority granted the Chairperson by the Board of Land and Natural Resources at its meeting of January 11, 1980 and the breach provision contained in General Lease S-4297, Miguel A. Ramirez and Valerie S. Ramirez, Lessees, were served a Notice of Default by certified mail dated June 5, 2018 (**Exhibit B-11**) for failure to keep lease rental payments current. The delinquent amount and late fees in the Notice of Default was \$91,370 covering the period from June 23, 2015 to June 22, 2018. As of October 1, 2018, the total delinquent amount and late fees has amounted to \$107,360.

The notice was accepted by the lessees on June 18, 2018. The lessees, were required to cure the default within 30 days, pursuant to the lease. This cure period expired on July 17, 2018.

In response to the Notice of default, the lessees sent a letter dated July 13, 2018 (**Exhibit B-12**) commenting on the appraised value determined by the independent appraiser and offered to pay a portion of the delinquent amount, which is \$37,779 to cure the default described in the NOD. Lessees agreed to remit additional funds in the event the rent is finally determined, and requested an "audience with the Board" if their proposed resolution was not accepted by staff.

Chairperson responded through her letter dated July 25, 2018 (**Exhibit B-13**) reiterating the demand for full payment of the delinquent amount. It has been the Division's position that a lessee seeking to place a request on the Board agenda needs to be in full compliance of the terms and conditions of the lease. The above-mentioned delinquent rental is clearly a non-compliant item. Staff repeated the Division's position to the lessees as the demand is stipulated in the lease document.

As of October 25, 2018, the current status of all lease compliance items is as follows:

- RENT: The Lessee has a rental delinquency and late fees in the amount of \$107,360 from June 23, 2015 to December 22, 2018.
- INSURANCE: The Lessee has posted the required liability insurance policy.
- BOND: The Lessee has not posted the required performance bond. The previous surety bond expired on August 30, 2017. Staff notes that no notice of default was issued for the lack of performance bond.

Staff recommends the Board authorize the termination of the subject lease in the manner specified by law.

RECOMMENDATION: That the Board:


1. Authorize the termination of General Lease No. S-4297 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-4297 to be applied to any past due amounts;
3. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of November 9, 2018, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law; and
4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under General Lease No. S-4297 and to pursue all other rights and remedies as appropriate.

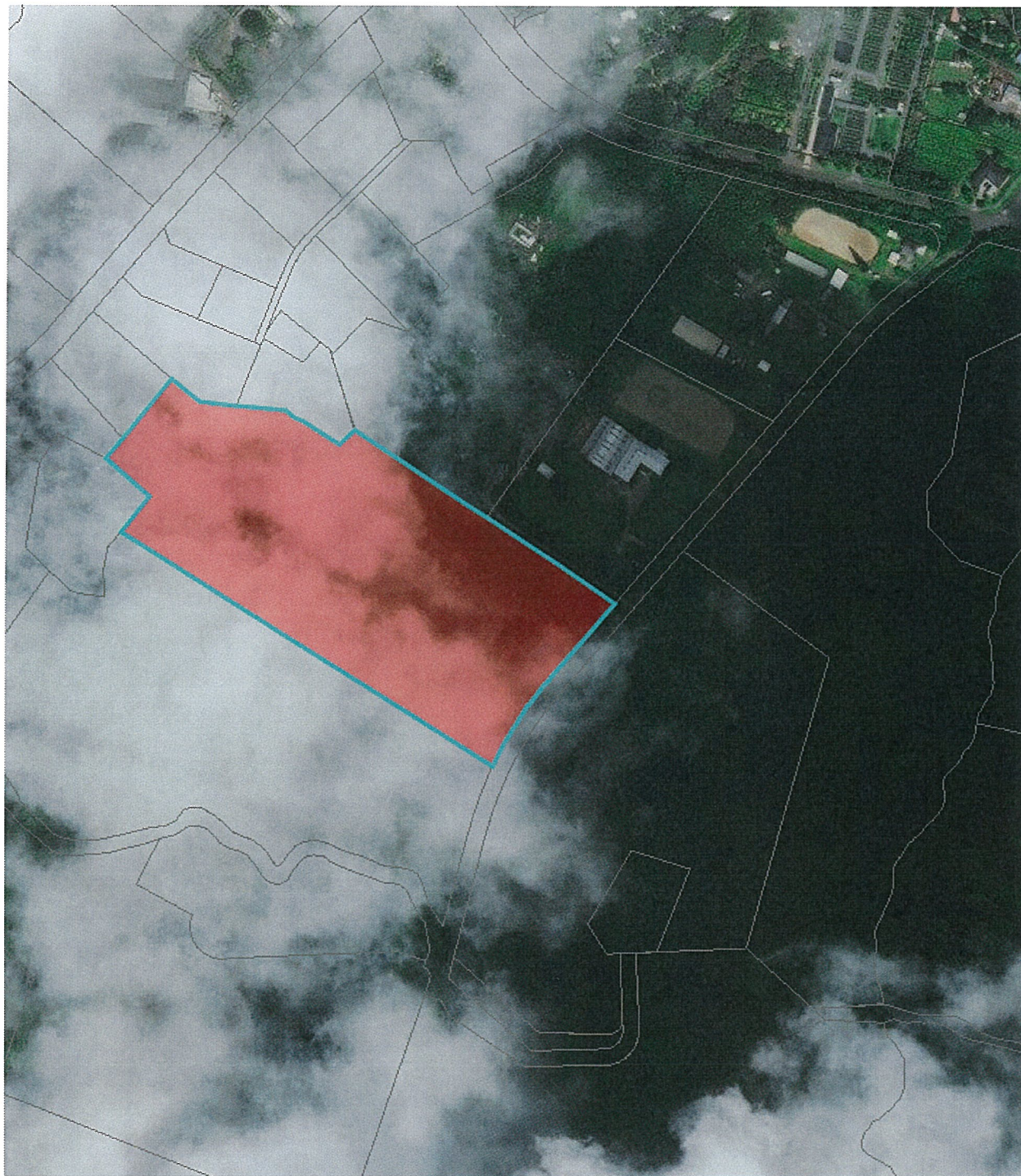
Respectfully Submitted,



Barry Cheung
District Land Agent

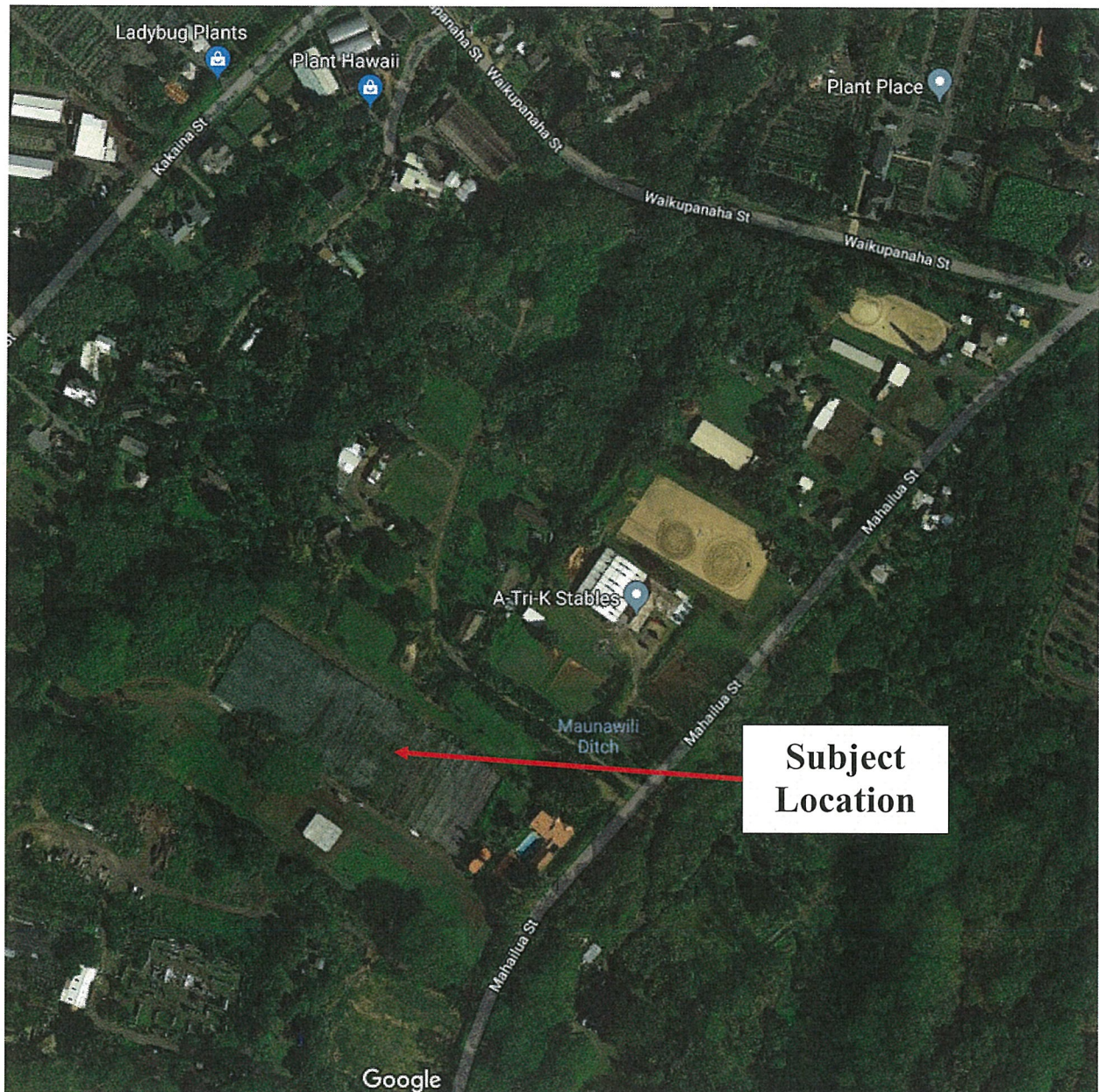
APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



TMK (1) 4-1-010:004

EXHIBIT A-1



TMK (1) 4-1-010:004

EXHIBIT A-2

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 19, 2015

Certified Mail
Article No. 7012 3460 0002 5279 4958

Mr. & Mrs. Miguel A. Ramirez

Waimanalo, Hawaii 96795

Subject: REOPENING OFFER LETTER
Ground Rent for General Lease No. S-4297 located at Waimanalo,
Island of Oahu; TMK: (1) 4-1-010:004

Dear Mr. & Mrs. Ramirez:

General Lease S-4297 states the annual rent shall be re-determined for the ten-year period from June 23, 2015 to June 22, 2025 by an appraiser whose services have been contracted for by the Lessor. We followed the procurement process spelled out in the enclosed Acquisition of Real Estate Appraisal Services and received an independent appraisal report (copy enclosed) which states the fair market rent for this period should be \$31,480 per annum.

Please indicate your acceptance or rejection by completing the following and returning a signed copy to this office. If you are rejecting our rent determination, you must hire your own appraiser and give us his/her name with your rejection notification. Please note that you must hire an appraiser that is licensed in the State of Hawaii as a Certified General Appraiser (CGA).

If we do not hear from you within 30 days of receipt of this offer, we will assume you accept the rent and will instruct our Fiscal Office as such.

Very truly yours,

A handwritten signature in black ink, appearing to read "Russell Y. Tsuji", is written over a horizontal line.

RUSSELL Y. TSUJI
Land Division Administrator

EXHIBIT "B-1"

The Undersigned:



Accepts the new lease rent of \$31,480 per annum under General Lease No. S-4297 offered by the State of Hawaii Department of Land and Natural Resources.

Rejects the new lease rent of \$31,480 per annum under General Lease No. S-4297 offered by the State of Hawaii Department of Land and Natural Resources and hereby appoints the following appraiser:

Stephany Sados

Appraiser Name

Phone No.

A handwritten signature of Miguel A. Ramirez.

Miguel A. Ramirez

9/17/2015

Date

A handwritten signature of Valerie S. Ramirez, with a large circular flourish.

Valerie S. Ramirez

09.17.15

Date

Lessee

Enclosures

cc: Land Board Member
District Branch
Central Files

MIGUEL & VALERIE RAMIREZ

- Waimanalo - Hawai'i - 96795

Telephone & Fax:

September 17, 2015

HAND DELIVERED TO THE DLNR LAND DIVISION OFFICE (09/17/2015)

**RUSSELL Y. TSUJI
STATE OF HAWAII - DLNR / LAND DIVISION
P.O. BOX 621
HONOLULU, HI 96809**

RE: REOPENING OFFER LETTER DATED 08/19/15 (GROUND RENT: GL4297)

Dear Mr. Tsuji:

Please allow this letter to serve as a formal rejection of your rent determination for our leased premises under DLNR General Lease S-4297 submitted pursuant to your letter regarding same dated 08/19/2015.

We contend that the rate of return on land percentage and fee simple land sales comparisons utilized by your appraiser was entirely inaccurate and does not reflect the actual conditions of DLNR leased farmland. Further, the appraisal asserts that our leased premises are not analogous to neighboring farm leases that were previously under DLNR tenancy that have been recently transferred to the Department of Agriculture to which we strongly disagree.

We dispute a number of things from your CBRE appraisal: First, the 2.5% rate of return on our restricted use leased premises. All similar and adjacent neighboring leased properties that were recently under the tenancy of DLNR and now are under DOA tenancy are rated from 1% to 1.5%. Pursuant to your appraiser's report (Page 29), when your appraiser interviewed Linda Murai at the DOA, she noted that the lower lease rents that they employ as well as their rate of return at 1-1.5% for similarly restrictive farm leased properties was attributable to the DOA's goal in helping farmers perpetuate farming. The DOA recognizes its responsibility in encouraging and aiding leased farming operations and the Land Division of the DLNR should be equally vested in stewarding their farmer's success.

Second, the CBRE appraisal concludes DLNR leased land values at \$89,000 per acre. We contend that the value should be in line with adjacent similarly restrictive farm properties which are valued at \$60,000 per acre. Your appraiser does not cite reasoning justifying the considerable difference of why our property should be rated at nearly double that of adjacent farm properties and the appraiser's conclusion that our leased premises are valued at nearly three times higher than that of our neighbors' is disproportionate and inequitable.

Third, we maintain that the use of Fee Simple land sales as comparative value factors in any leased land methodology is not applicable. Recent DLNR to DOA farm lease transfers and assignments should be the only source of value added comparison used when determining leased land values. This report fails to list a single lease assignment or transfer transaction which would be an applicable source of comparison. Lands held under general agriculture leases in no way compare to the value of privately owned fee simple property and even using an applied deducted percentage rate towards fee simple value is virtually attempting to compare

EXHIBIT "B-2"

Miguel & Valerie Ramirez
Letter to Russell Tsuji / DLNR Land Division
Dated 09/17/2015
Continued - Page Two

the value between apples with oranges. The Land Division used this exact contradictory land sales comparison methodology in our 1995 rental determination appraisal which we successfully contested - the fee simple comparative values were reassessed by the DLNR as inappropriate then as it should now.

Fourth and most impertinent, your appraiser failed to note that our leased premises include an unusable, undeveloped portion of nearly two acres that has been classified as conservation land. This record is clearly on file and the appraiser's neglect in deducting this acreage from his valuation renders his appraisal inaccurate.

For these reasons we ask for a reconsideration of the offer presented to reach a fair rental reopening of an amount equal to rent charged to similarly leased properties of not more than \$10,848.60 ($\$60,000 \text{ per acre} \times 12.054 \text{ acres} = \$723,240.00 \times 1.5\% = \$10,848.60$). We are working farmers and seek a resolution on our rental reopening determination that will not take farm funds away that have been allocated for the care, maintenance and operation of our crops and premises and ask for your kind consideration in resolving this without the requirement of us hiring an independent appraiser.

We thank you in advance for your assistance and support and look forward to your favorable reply.

Very Best Regards,

A handwritten signature in black ink, appearing to read 'Miguel & Valerie Ramirez', with a large, stylized circular flourish at the end.

Miguel & Valerie Ramirez

MVR: msw
cc: file

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

September 23, 2015

Mr. & Mrs. Miguel A. Ramirez

Waimanalo, Hawaii 96795

Subject: Reopening Offer Letter, Ground Rent for General Lease No. S-4297
located at Waimanalo, Island of Oahu, Hawaii; TMK: (1) 4-1-010:004

Dear Mr. & Mrs. Ramirez:

We are in receipt of your response to our Reopening Offer Letter dated August 19, 2015. In your response letter you indicated that you were rejecting our new rent of \$31,480 per annum for the ten-year period from June 23, 2015 to June 22, 2025.

You also indicated that you have selected Stephany Sofos to prepare your appraisal. According to Section 171-17(d) of Hawaii Revised Statutes, "... if the lessee does not agree upon the fair market rental, the lessee may appoint the lessee's own appraiser and lessee shall provide the board with the complete appraisal prepared by the lessee's appraiser. Each party shall pay for its own appraiser. If the board's and the lessee's appraisers do not agree upon the lease rental, the lessee and the board shall in good faith attempt to resolve the dispute by nonbinding mediation by a single mediator mutually agreed upon by the parties. If the dispute is not resolved by the mediation, the fair market rental shall be determined by arbitration as provided in chapter 658A, which shall be final and binding."

Ms. Sofos must complete her appraisal report in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and provide a copy of the same to our office within 45 days of her appointment which was on September 17, 2015.

Additionally, under the terms of the lease, you are required to pay the new appraised rent pending the outcome of the rent determination process. Our records show you paid rent for the period of June 23, 2015 through December 22, 2015 at the old rate of \$9,140 per year. Please remit the balance of \$11,170 to us as soon as possible to remain in good standing on your

EXHIBIT "B-3"

account. We have informed our fiscal office to charge the new rent until the outcome of the rent determination process.

Very truly yours,



RUSSELL Y. TSUJI
Land Division Administrator

cc: Ms. Stephany Sofos
(with copy of Lessee's letter dated 9/17/15)
The Hallstrom Group/CBRE, Inc.
Attention: Mr. James Hallstrom
(with copy of Lessee's letter dated 9/17/15)
District Branch
Central Files

MIGUEL AND VALERIE RAMIREZ
- WAIMANALO - HAWAII - 96795
Telephones.

October 23, 2015

DELIVERED VIA EMAIL TRANSMISSION TO: (10/23/15)

**MS. SUZANNE CASE
CHAIRPERSON
STATE OF HAWAII
DEPARTMENT OF LAND & NATURAL RESOURCES**

RE: GL#4297: RENT REOPENING 2015-2025

Dear Ms. Case:

To begin, we thank you for your approval letter for the annual renewal of our Agricultural Burn Permit - we have submitted all the necessary documents and have been advised to expect the renewal certification soonest.

As we appreciate that you have many important tasks on your schedule, we will keep this as succinct as possible. We have recently received notice that our lease is up for its 10 year rent reopening process. We are in receipt of your Administrator's letter stating that our annual rent lease is due to increase from its current \$9140.00 to \$31,480.00. Understandably, we are stunned and concerned as a rent hike that is nearly four times greater is an improbable debt for our farm (or any small business farming operation for that matter) to sustain. We are seeking a mutually beneficial resolution to this matter and ask for your assistance in allowing us to do so in a cost efficient manner which we have outlined herein.

In our letter to your Administrator, Russell Tsuji, we detailed the problematic methods and determinations made by the CBRE appraisal (please see letter attached). Mr. Tsuji rejected our requested counter offer of \$10,848.60 and advised that not only are we required to hire our own appraiser to do a complete formal appraisal for our counter offer (which will cost \$5500.00) but that we required to remit \$11,170.00 immediately to the DLNR Fiscal Office for the balance of the bi-annual payment of \$15,740.00 based on \$31,480 per year until such time as the agreed to annual rental amount is resolved (letter attached for your reference). This equates to having to come up with \$16,670.00 immediately just to discuss the new rental amount. To state that we are in shock and awe is an understatement, indeed.

In the past, the DLNR Chairpersons have been very cooperative in settling annual rental reopening conflicts without the need for their leased farmers to incur such high costs just to negotiate a reasonable rent when that money is greatly needed for the daily operation of the farm - especially this year when all windward side farmers like us have incurred additional expenses due to the flooding and inclement weather occurrences experienced this season. We are imploring the same support from you, Ms. Case, and do so mindful that the DLNR must also monetarily benefit from said rent increase.

Since there is already a full counter appraisal and arbitrated rent determination on record for our adjacent property neighbor, Walter Liew, we ask that the arbitrated amount of \$10,800 for 15 acres be considered for our property which is similar in size (our property is 14.054 acres).

EXHIBIT "B-4"

10/23/15 Letter to S. Case
re: GL#4297: Rent Reopening 2015-2025
Continued - Page Two

Additionally, following is a list of our other adjacent and neighboring property lease rents that should be considered when determining our rental amount:

- 1) (adjacent property to ours): Ernest Carlbom - 11 acres
Annual Lease Rent: \$7700 (renewed 2009)
- 2) (adjacent property to ours): Abigail Kawananaoka - 5.7 acres
Annual Lease Rent: \$5300 (renewed 2009)
- 3) (neighboring property): Robert Rita - 6.15 acres
Annual Lease Rent: \$4440 (renewed 2009)

Based on this information, the average annual rent per acre on comparable leased adjacent neighboring farms is \$768.00. Calculating that average for our 14.054 leased premises equals \$10,794.00. This is what we feel is a mutually beneficial and fair annual rental rate for our leased premises taking into account that within the 14.054 acres there is an area of approximately two acres that is unusable as it is a natural streambed that fills and flows to capacity after any rainfall and therefore not cultivatable. Further, we incur costs to maintain this area despite its inability to recompense the farm with any viable crop.

Our counter offer of \$10,794.00 per annum provides the DLNR with an additional \$3190.00 annually from the present annual rent ($\$10,794 - \$9140 = \$1654$. $\$768 \times 12.054$ cultivatable acres = \$9258. $\$10,794 - \$9258 = \$1536$. $\$1654 + \$1536 = \$3190$ additional rent to DLNR).

With the average of \$768 per acre on all the properties on our street, a recorded arbitrator's determination of \$700 per acre and recorded proof of all figures used here, your Administrator is trying to charge us \$2240 per acre ($\$31,480 / 14.054$ acres = \$2240 per acre). This is simply excessive, unfair and will force us out of business. This is why we seek your help in order to meet with you so that we can present all recorded facts noted above and to resolve this issue in the most cost and time efficient manner possible.

Today, your assistant, Miss Sara, has scheduled a conference call with us on November 2, 2015 at 1:30pm. Coincidentally, our deadline to submit our counter appraisal falls on the same day. We have been trying to contact you and have been crossing paths on the telephone for several weeks now so we would appreciate it if you could contact your Administrator, Russell Tsuji, to approve a deadline extension until we can speak directly with you and make arrangements if necessary to resolve this matter in your determined manner.

We thank you in advance for your attention and consideration and look forward to your reply.

Very Truly Yours,



Miguel Ramirez



Valerie Ramirez

MIGUEL & VALERIE RAMIREZ

- Waimanalo - Hawai'i - 96795

Telephone & Fax:

October 26, 2015

HAND DELIVERED TO THE DLNR LAND DIVISION OFFICE (10/26/15)

RUSSELL Y. TSUJI
STATE OF HAWAII - DLNR / LAND DIVISION
P.O. BOX 621
HONOLULU, HI 96809

RE: GL4297 - REOPENING LEASE RENT: DEADLINE EXTENSION REQUEST

Dear Mr. Tsuji:

Could we please be granted a deadline extension for the submission of a counter-appraisal pertaining to the 2015 rental reopening for our leased premises? The November 2nd deadline is fast approaching and we have recently learned that we must contract a different appraiser than Ms. Sofos.

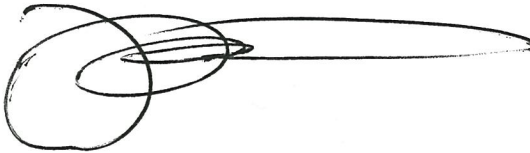
We will need an additional 45 days from 11/02/15 (12/18/15). We have spoken to other qualified appraisers and have chosen George Hao & Associates who states that they will need a minimum of 45 days to complete the work.

We appreciate your assistance in this matter and await your reply.

Very Best Regards,



Miguel & Valerie Ramirez



MVR: msw
cc: file

EXHIBIT "B-5"

RECEIVED
LAND DIVISION
2015 OCT 28 AM 6:23
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 5, 2015

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Miguel and Valerie Ramirez

Waimanalo, Hawaii 96795

Dear Mr. and Mrs. Ramirez:

Subject: Reopening of lease rent in GL S-4297

We received a written request dated October 26, 2015 from you requesting an extension of time of 45 days to submit your appraisal report to us in regard to the reopening of lease rent in General Lease No. S-4297. In your letter you informed us that you have to replace your original appointed appraiser, Stephany Sofos, with another appraiser and you have chosen George Hao & Associates. We will therefore approve a 45-day extension from November 1, 2015 (the original submission date) to December 16, 2015.

If there are any questions, please call Russell Tsuji, Land Division Administrator or Pamela Matsukawa, Appraisal and Real Estate Specialist at 587-0456.

Very truly yours,

A handwritten signature in black ink, appearing to read "Suzanne D. Case".

Suzanne D. Case
Chairperson

EXHIBIT "B-6"

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 6, 2016

Miguel and Valerie Ramirez

Waimanalo, Hawaii 96795

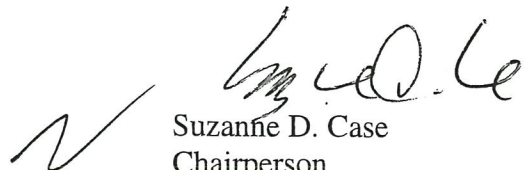
Dear Mr. and Mrs. Ramirez:

Subject: Reopening of lease rent in GL S-4297

By letter dated November 5, 2015, we granted your request for an extension of 45 days to submit your appraisal report to us in regard to the reopening of lease rent in General Lease No. S-4297. You asked for the additional time because you replaced your original appointed appraiser, Stephany Sofos, with George Hao & Associates. As stated in our letter, the last day of the extension was December 16, 2015. As of today, we still have not received your appraisal report. We would appreciate it if you would submit the appraisal report to our Land Division immediately.

Thank you for your prompt attention to this matter.

Very truly yours,


Suzanne D. Case
Chairperson

cc: Land Division
central files

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXHIBIT "B-7"

MIGUEL AND VALERIE RAMIREZ
- WAIMANALO - HAWAII - 96795
Telephones:

April 29, 2016

DELIVERED VIA EMAIL TRANSMISSION TO: (04/29/16))

**MS. SUZANNE CASE
CHAIRPERSON
STATE OF HAWAII
DEPARTMENT OF LAND & NATURAL RESOURCES**

RE: GL#4297: RENT REOPENING 2015-2025

Dear Ms. Case:

Our most sincere thanks to you for granting us this opportunity to present to you the following information for consideration with regards to the DLNR's recent requirement that we enter into a costly and what we believe to be an unnecessary non-binding mediation process for the determination of our rental renewal.

Currently, the DLNR has on record a full counter appraisal and mediated rent determination for an adjacent property neighbor, Walter Liew. During Mr. Liew's mediation process, the mediator concurred that the value determined by the DLNR appraisal was excessive and ascertained a rent figure closer to Mr. Liew's proposed amount. Despite Mr. Liew's eventual acquiescence to the exorbitant DLNR rent amount, the mediated rental amount is clearly on record and no where near to the figure proposed by the DLNR appraisal.

In fact, historically speaking, the DLNR rental reopening appraisals have always been so far out of line so as to force leasehold farmers to incur absurd costs in order to maintain a viable annual rent. One such farmer located on Kaulukanu Street in Waimanalo was forced to forfeit her lease back to the DLNR simply because she did not have the funds from her small family farm to pay for the counter appraisal and mediation costs in order to negotiate a fair annual rent. This is abysmal and certainly not in line with DLNR's Mission Statement to "...protect..and manage land resources for current and future generations." We have already spent over \$5000 for a full counter appraisal and now must face the possibility of paying at least as much for the mediation process. How is this a just and fair system for DLNR farmers?

We have provided a number of sound arguments that support our request for a \$12,750 annual rent determination:

- 1) Our comprehensive appraisal determining rental cost at \$12,750.
- 2) In our letter to your Administrator, Russell Tsuji, we detailed the problematic methods and determinations made by the CBRE appraisal which renders that appraisal defective.
- 3) Adjacent and Neighboring leasehold properties on our street have rents far below what we are proposing:

(adjacent property to ours): Ernest Carlborn - 11 acres
Annual Lease Rent: \$7700 (renewed 2009)

(adjacent property to ours): Abigail Kawananakoa - 5.7 acres
Annual Lease Rent: \$5300 (renewed 2009)

(neighboring property): Robert Rita - 6.15 acres
Annual Lease Rent: \$4440 (renewed 2009)

EXHIBIT "B-8"

- 4) In an unrelated civil matter, we had another separate appraisal conducted on our leasehold which arrived at a leasehold land evaluation of \$464,000. This is more than three times less than what the DLNR appraisal stated.

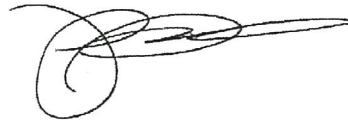
We have not only one but **two** recent appraisals done on this property within this year - both of which are far below the CBRE appraised value. It is not conscionable to consider that the historically fallible DLNR appraisals are in any way a valid indicator of the leasehold value. Consideration must be given to the fact that every DLNR appraisal for rental reopening has been challenged and to compel family farmers to spend an unreasonable amount of money in order to protect their interest is unwarranted and unjust.

We hereby request a meeting with you, Ms. Matsukawa and whom ever you deem appropriate in order to resolve this matter. We are concerned that the mediation process is a very slippery slope as research proves that it historically only leads to arbitration and further incurred costs and time away from farming business for your leasehold farmers. We thank you in advance for your attention and consideration and look forward to your reply.

Very Truly Yours,



Miguel Ramirez



Valerie Ramirez

MVR:vsr
Enclosures
cc: file

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May 3, 2016

Miguel and Valerie Ramirez

Waimanalo, Hawaii 96795

Dear Mr. and Mrs. Ramirez:

Subject: Reopening of lease rent in GL S-4297

I am in receipt of your letter dated April 29, 2016, in which you ask to resolve the dispute over the rent reopening for your lease without undergoing mediation. This cannot be done because we must follow the requirements of Section 171-17, Hawaii Revised Statutes, which provides for mediation as the next step in the rent reopening process. We are pleased to inform you that, thus far, every mediation that we have undergone has been successful. Lessees and the department made a good faith effort to settle the rent disputes. Please proceed with the mediation process by working with the Land Division on the selection of a mediator.

Thank you very much for your cooperation.

Very truly yours,

A handwritten signature in black ink, appearing to read "Suzanne D. Case".

Suzanne D. Case
Chairperson
Board of Land and Natural Resources

cc: Russell Tsuji
central files ✓

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXHIBIT "B-9"



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May 26, 2016

Miguel and Valerie Ramirez

Waimanalo, Hawaii 96795

Dear Mr. and Mrs. Ramirez:

Subject: Reopening of lease rent in GL S-4297

Thank you for selecting Ted Yamamura as the mediator, but after reviewing the appraisal reports for GL S-4297, Mr. Yamamura realizes that he is involved in appraisal matters regarding Waimanalo agriculture lands that could make his service as a neutral mediator questionable. He has declined our request.

We must select a new mediator and offer the list below for your consideration. Please let us know whom you would agree to use as the mediator from this list. If you do not agree to anyone on this list, please send us your list of potential mediators.

Alan Conboy
Andrew Wilson, Esq.
Edward (Ted) Becker
Paul Cool
Craig Leong
Jan Medusky
Steven Chee
Sanford Goto
Sidney Komatsu

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to be "Russell Y. Tsuji".

Russell Y. Tsuji
Administrator

EXHIBIT "B-10"

c: central files

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

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ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

June 5, 2018

Certified Mail: 7016 2070 0000 4949 0087

Ref: GL 4297

Miguel A. Ramirez and Valerie S. Ramirez

Waimanalo, Hawaii 96795

Dear Mr. & Mrs. Ramirez:

NOTICE OF DEFAULT

Pursuant to the authority granted me by the Board of Land and Natural Resources at its meeting of January 11, 1980, and the breach provision contained in General Lease S-4297, you are hereby served a Notice of Default on said lease for failure to do the following:

X Keep lease rental payments current

Our Fiscal Office informs us that you are in arrears in lease rental payments and late fees in the amount of \$91,370 covering the period June 23, 2015 to June 22, 2018.

By our letter dated August 19, 2015, you were informed of the annual rent determined pursuant to the rental reopening as \$31,480 covering the period from June 23, 2015 to June 22, 2025. On September 17, 2015, you informed us of your rejection of the new rent, naming your appraiser for the rent determination process, and offered \$10,848.60 as new rent.

On September 23, 2015, we informed you in writing that you are required, pursuant to the terms of the lease, to pay the balance of the new appraised rent pending the outcome of the rent determination process. Further, your appraiser was required to provide her appraisal report to us not later than 45 days from September 17, 2015.

On November 5, 2015, we agreed to extend the deadline for your appraiser to provide the appraisal report to December 16, 2015. In response to your letter dated April 29, 2016, we advised you that settling the rent dispute without undergoing mediation is not permissible under the statutes.

EXHIBIT "B-11"

11/19/18

On May 26, 2016, we asked for your selection of the second mediator, as the first mediator selected has declined the assignment due to conflict of interest.

Subsequent to our letter dated October 30, 2017 regarding the transfer of the subject land to the Department of Agriculture ("DOA") pursuant to Governor's Executive Order No. 4535, DOA informed us that they will not accept the lease due to the rental delinquency.

Therefore, Land Division will continue to be the agency handling the subject lease, until the lease is in full compliance and is transferred to DOA.

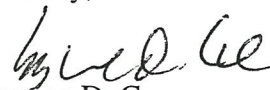
You are hereby given thirty (30) days from the date of receipt of this letter to cure the above-described breach.

Your failure to act on the above matter may result in the following:

1. Cancellation of General Lease S-4297.
2. Retention of all sums heretofore paid under General Lease S-4297 as liquidated damages.
3. Termination of all your rights and obligations under General Lease No. S-4297.
4. Initiation of legal action to collect the delinquent lease rental owing the State of Hawaii under General Lease S-4297.
5. Forfeiture of your lease performance bond.

We therefore urge your fullest cooperation. Should you have any questions, please contact our Oahu District Land Office at (808) 587-0433.

Sincerely,


Suzanne D. Case
Chairperson

cc: Land Board Member
Fiscal Office
Security Interest Holder -
Accredited Home Lenders, Inc.
AMRESO Residential Mortgage Corporation
Purple Water, LLC
Bond Holder State - Farm Fire and Casualty Company

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Miguel A. Ramirez
Valerie S. Ramirez

Waimanalo, Hawaii 96795

BC

GL S-4297



9590 9402 2019 6123 7654 20

2. Article Number (Transfer from service label)

7016 2070 0000 4949 0087

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Miguel Ramirez

C. Date of Delivery

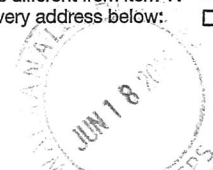
6/18/14

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No



3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery

(over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

MIGUEL AND VALERIE RAMIREZ

- WAIMANALO - HAWAII - 96795

Telephone:

July 13, 2018

DELIVERED VIA USPS CERTIFIED, RETURN RECEIPT & HAND -DELIVERED 07/13/18

**MS. SUZANNE CASE, CHAIRPERSON
STATE OF HAWAII - DLNR
1151 PUNCHBOWL STREET
SUITE 130
HONOLULU, HI 96813**

RE: GL#4297: NOTICE OF DEFAULT DATED 06/05/2018

Dear Ms. Case:

We are in receipt of the Notice of Default ("Notice") citing failure to keep lease rental payments current and offer the following in response to the issues raised and circumstances resulting in said deficiency:

The rental reopening matter in dispute has not, to date, been resolved primarily due to the lack of follow up by your department's appraiser, James Hallstrom. Mr. Hallstrom requested to exchange reports with our appraiser in an effort to mutually agree on a value with which to determine the annual rent going forward pursuant to a July 2016 email from our appraiser who advised us that Mr. Hallstrom requested that they meet to exchange the reports and discuss value. Our appraiser contacted Mr. Hallstrom's office to schedule said meeting and left several messages requesting a call back to no avail. So at the forefront, we ask for your assistance in getting Mr. Hallstrom to the table with our appraiser in order to commence the exchange of reports and resolve the rental reopening issue forthwith.

In the meantime, to bring our rent payments current and to cure the default, we are prepared to remit to the fiscal office the sum of \$37,779.00 reflecting payment of annual rent for years 2015, 2016 and 2017 which includes a \$5397.00 payment for the June 23, 2018 period utilizing the current State of Hawaii Department of Agriculture ("DOA") annual rent assessment of 1.5% of the land value which equates to \$768 per acre x 14.054 acres of subject land equaling \$10,794.00 per annum. This payment would be made with the understanding and agreement that once the rent reopening matter is resolved and if the rent is determined at a rate higher than \$10,794 annually, we will remit any monetary difference for the period of June 23, 2015 through June 23, 2018 forthwith. It is our intent to cure the default and bring our rent payments current until such time that the new rent is determined. Since our lease will be transferred to the DOA upon full compliance with lease rent payments as confirmed in writing pursuant to the Notice, the use of DOA's rental calculation for rent commencing 2015 and forward is warranted and prudent. It is absolutely impossible for our small, wholesale farming operation to pay the department's proposed \$31,480 per year, even if only temporary, as the financial burden would create an apocalyptic blow to the farm resulting in its immediate closure. As it stands, the \$7000.00 that we have been forced to pay to our appraiser just to commence the negotiation process equates to 77% of our annual lease rent which has already created a financial burden for the farm.

Continued Next Page

EXHIBIT "B-12"

Your department's determination of a 244.5% increase in rent from \$9140.00 to \$31,480.00 is unreasonable. There is no justification that a 200%+ increase in rent is feasible by any means. Had the department utilized its 24.5% increase formula that it has employed for over 20 years, we would not have disputed the rent increase which would have saved the Lessor and Lessee collectively over \$15,000 in unnecessary expenditure with only more expense expected in the near future.

It is important to note that in the department's appraisal, the DOA rent formula that is in effect for all surrounding, comparable and adjacent farms to the subject lease (that which ALL of the surrounding and adjacent farms were DLNR managed leases at one time) was recognized by the appraiser in writing but failed to utilize the DOA formula and further failed to utilize the previously employed 24.5% increase formula that the department has used in all preceding rent reopenings on the subject lease for the past two decades.

The historical rent reopening factor on any leasehold farm land is the sole source of information available to fiscally prepare for subsequent rent increases throughout the tenure of a lease. We relied on the subject lease's historical rent increase formula in order to budget our rent increase. Following is the historical rent amounts determined for the subject lease:

Initial Annual Rent: 1995 to 2005: \$ 7,343.00
1st Rent Reopening: 2005 to 2015: \$ 9,140.00 (a 24.5% increase of \$1797)
2nd Rent Reopening: 2015 to 2025: \$31,480.00 (a 244.5% increase of \$22,340)

There is no rationale to support the consideration that a 244.5% increase in rent for a strictly enforced general agriculture land lease as equitable. Additionally, the value of the subject lease as determined in the department's appraisal is defective because at present, the remaining term of the lease has decreased by ten years thus lowering, not increasing, the value of the subject lease. There is no possible means of budgeting a 244.5% increase of rent for any business whatsoever, especially a small farm. The department's choice of disregarding its own historical rent increase formula and replacing it with a flawed and inflated appraisal neglecting adjacent comparable land lease rents and basic lease valuation theory is illogical and impertinent.

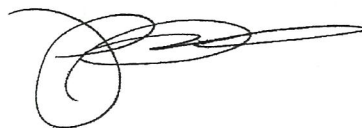
There is precedence within the department's history that allowed for the Lessor and Lessee to settle the rent determination mutually and without further expense (ie: InSite Towers Development) and we ask for same. We urge the department to concur that receipt of a payment of \$37,779.00 from us would constitute a cure of the default with the agreement that additional funds will be remitted should the rent determination exceed \$10,794.00 annually and to assist in the implementation of a the mutual resolution between the two appraisers in order to resolve the rent increase issue at hand.

Should we not receive consensus to our proposed resolution as stated hereto, we will consequently request audience with the board for further discussion and determination. We await your favorable reply.

Respectfully Submitted,



Miguel Ramirez



Valerie Ramirez

MVR:vsr

cc: file, Barry Chueng - DLNR Land Agent, State Farm - Bond Holder

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 25, 2018

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Ref: GL 4297

Miguel and Valerie Ramirez

Waimanalo, Hawaii 96795

Dear Mr. & Mrs. Ramirez:

Subject: Notice of Default for Rental Delinquency, General Lease No. 4297;
Waimanalo, Koolaupoko, Oahu; TMK (1) 4-1-010:004

We write in response to your letter dated July 13, 2018 regarding the subject matter.

The obligation for the lessee to pay the fair market rental as determined by the lessor in the event the new rental is not determined in the reopening process is provided in the lease and its extension document. Therefore, we are demanding the full payment of the delinquent rental mentioned in our Notice of Default received by you on June 18, 2018.

To facilitate the process, we will immediately contact the appraiser retained by the State and instruct him to follow through the mediation/arbitration process. To protect the integrity of an independent appraisal, we cannot instruct the appraiser to adopt a unique rental valuation or approach, except fair market value of the land in this leasehold case.

We look forward to receiving the full payment of the delinquent rental mentioned in our Notice of Default.

If you have further questions, please contact Oahu District Land Office at 587-0433.

Sincerely,

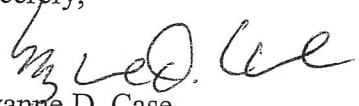

Suzanne D. Case
Chairperson

EXHIBIT "B-13"