

JOSEPH RYAN, JR.,
Attorney At Law, LLC.
41-430 Waikupanaha Street
Post Office Box 562
Waimanalo, Hawaii 96795
Phone/fax (808) 259 6870

December 9, 2020

Dear Chair Case and Members:

Re: LESSEES OBJECTION TO ITEM D-10 OF THE DECEMBER 11, 2020 AGENDA FOR THE MEETING OF THE BOARD OF LAND AND NATURAL RESOURCES, TO WIT: “Rescind Prior Action of December 12, 2014, D-32; Consent to Reinstatement and Extension of Lease Term, and Setting of Rent for Extension of Lease Term, General Lease No. S-4298, Walter and Ann Liew, Lessee; Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-010:003 and Settlement of Lawsuit, Liew v. State of Hawaii, Civ. No. 07-1-0644-04 (JHC).”

Since 2005, the Land Division has omitted material and relevant information from its board submissions. Board members, especially the attorneys among you, have a need to understand the complete and true facts and be given the opportunity to correct the record before going further.

THE LEASE IS NOT VIOLATED BY HAVING MORE THAN TWO (2) HOUSES?

Today’s staff submittal tacitly admits that the Rosehill lease of 1970 (**Exhibit “10”**) is the controlling document in this case. It appears the December 12, 2014, Agenda Item D-32, fails in the interpretation of this fundamental document as it relates to the demand of “removal of the 2nd house from the property” and “combin[ing] the 3rd and 4th houses” and has resulted in depriving the Liews of at least \$140,000 in personal property value and subjected them to additional expense all based on the mistake of fact.

The lease, at paragraph 29, refers to “DWELLING” and permits one primary “dwelling” and an employee(s) “dwelling”. *BLACK’S LAW DICTIONARY, 11th ed.*, primarily defines “dwelling-house” as “The house or other structure **in which one or more people live; a residence or abode.**”

Nowhere in the mass of documents I have reviewed has anyone alleged that the structures identified as “2nd house” or “3rd house” was used as a “abode” or “residence”, hence the houses did not offend the lease.

Liews purchased the lease and the buildings, including the “2nd house” and “3rd house” from the USDA. Both the purchase documents and the lease (Paragraph 10, “Repairs to Improvements” **Exhibit “10”**) required Liew to keep the houses in “good order, condition and repair”. The lease also liens the value of the houses. Neither the “2nd house” nor the 3rd house has been occupied during Liews possession of the leasehold. Factually, there was no issue or

allegation of residential use of either structure during the inspection by Land Agents Patti Miyashiro and Al Jodar in 2001. (See **Exhibit “5”**).

The Liew’s were well within the lease and their contractual rights to use the “2nd house” as an office, showroom, perhaps even “roadside” sales, or merely used it to store fertilizer and bonsai potting soil. The department over-reacted to the issue. However, if the Liew’s failed to agree to the illegitimate order to remove the house, their lease would be extinguished.

The Liew’s consent has never been uncoerced or freely given. Ever since the department issued its own Notice of Default in 2005, the Liew’s have always been under the looming threat of losing their lease and all of their prior investment. This issue is further discussed below.

THE BOTTOM LINE:

ALL THE STRUCTURES REQUIRING PERMITS ARE PERMITTED.

THE NOV’S ARE CURED.

THE STATE DID NOT PAY A SINGLE PENNY.

STATEMENT OF FACTS THAT CANNOT BE REASONABLY CONTROVERTED

1. July 12, 1995: DLNR Land Agent Cecil Santos did a “joint visit” with the USDA to GL S-4298 and “[t]he purpose of the visit was to identify lease violation and corrective action that would be acceptable to the State.” (**Exhibit “1”**). The lease violations “identified” included “buildings on the property [were] constructed without building permits” and were identified as “the warehouse, two greenhouses and one house”. Other violations related to wooden pallets, existing dirt piles and “old vans” and debris.

The letter also implies the Rural Economic and Community Development (RECD), a division of the USDA, will take responsibility for the violations and “assume[s] the . . . RECD] will convey the leasehold interest to another party without leasehold violations when the corrective actions [for the listed violations] are completed. (**Exhibit “1”**).

2. July 20, 1995: Land Agent Cecil Santos required the USDA to cure the lack of building permits “within sixty (60) days.” (**Exhibit “2”**).

3. July 25, 1995: Responding to DLNR Land Agent Santos, the USDA stated “We may have difficulty obtaining “after the fact” building permits within the sixty (60) day time frame to cure the [lack of building permits] fourth violation” while assigning responsibility to correct certain violations to Mr. Steven S. Saiki (the lessee in default) and Mr. Richard Lee. (**Exhibit “3”**).

4. April 21, 1997: DLNR Chairman Michael D. Wilson wrote to the USDA regarding an extension of time for a *new* Notice of Default regarding a “violation of the Assignment Provision of General Lease No. S-4298.” *The violating lessee, Steven S. Saiki, was still in possession* of the property and *the building permit violations were ignored*. (Exhibit “4”).

5. 1998 and 1999: Walter and Ann Liew purchased the lease from the USDA and the BLNR approved the assignment of lease on May 20, 1999. No notice of lease violations or lack of building permits was given to Liew. Liew’s subsequent USDA loan documents required Liew’s to keep the buildings in good condition as *the unpermitted buildings were the collateral for the loan*.

6. February 8, 2001: DLNR Land Agents Patti E. Miyashiro and Al Jodar conducted a physical inspection of the property and wrote: “We have noted that the lease area is being maintained in a satisfactory condition.” (Exhibit “5”). There was no mention of the documented lack of building permits or of the residential use of the 2nd and/or 3rd structures: aka “houses”.

7. April 9, 2003, the Liews took out a \$200,000 mortgage on their Waialae Iki house to fund additional cleanup and improvements on the subject lease. That money was additional to a \$35,000 note with USDA in February of 2002.

1998 to April 18, 2004: Walter Liew paid out the following:

a.	Two (2) rental excavators with operators	\$14,000.00
b.	forty-three (43) semitruck loads of “garbage, trash, debris, and scrap metal at about \$700 per load. Including 16 wrecked and abandoned automobiles 4 large trucks, and 3 “Tropical Trolleys”	\$ 30,100.00
c.	Building replacement (house #3)	\$140,000.00
d.	Floor replacement (house #1)	\$25,000.00
Total		\$209,100.00

8. April 19, 2004: The City and County of Honolulu issued a Notice of Violation (NOV) to the **Department of Land and Natural Resources** and to Walter and Ann Liew. (See Exhibit “7”). The NOV states “There are greenhouses, workshops, an office building, three dwelling units, a bonsai studio, and a six feet (sic) chainlink fence on the property that were constructed without building permits.” A second NOV stopped Liew from conducting his bonsai business and prohibited him from filing for a Conditional Use Permit until all the NOV violations were cleared.

9. April 27, 2005: DLNR issued a Notice of Default holding Liew solely responsible for the unpermitted buildings and other violations of lease.

10. April 26, 2005 to today: To correct the NOV ISSUED TO THE DLNR and to the Liew's, the Liew's have spent the following:

e.	Architect fees	27,354.50
f.	Building Permit (double fee penalty)	25,000.00
g.	Required Electric Permit upgrades	15,000.00
h.	Building moving/removing costs (combine 2/3/4)	55,000.00
i.	Contractor JIT W. Wong	48,100.00

Total	\$170,454.50
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11. April 19, 2004 to date: The Liew's 2004 IRS taxes reported their gross farm income as \$149,300.00 and net income as \$25,127.00. (**Exhibit "6"**). The NOV which stopped the Liew's from conducting business activities on agricultural land (NOV No. 2004/NOV-04-143) was cured on March 17, 2005. (**Exhibit "7"**). The Liew's submitted a CUP application to the DLNR to re-start their bonsai business and were denied by the DLNR. The resulting lost income of an estimated *net income* of \$376,905.00.

12. March 12, 2019: The Liew's were stopped in traffic on Pali Hwy when their vehicle was struck from behind. Mr. Liew's treatment for his injuries exceeded the PIP insurance and he has been paying for treatment out of his own pocket. Mrs. Liew's injuries are also serious and debilitating.

13. To date: The state has not spent a single penny in cleaning up the mess created while the property was leased to Steve Saiki and S&S Plants and the USDA. Further, the Land Division appears to have either given deference to the USDA's inability to cure the DPP violations or is complicit in concealing from the Liew known violations.

The Liew's, on the other hand, are into the property by at least \$380,000 in clean up and building code violation correction and suffered loss of business income in the minimum of another \$375,000. They have spent mortgage money and a HELOC as well as their liquid assets on the initial cleanup and have extended themselves to finance the repair of DLNR's negligence. In return they have been met with no less than three eviction attempts or cancelations of lease and an extortionate rent increase in lieu of eviction and loss of investment.

REBUTTAL TO STAFF SUBMITTAL "REMARKS"

The DLNR denial of responsibility has always cast the Liew's in a false light. The division, even in today's (December 11, 2020) submission, refers to its knowledge as merely "**alleged**" that when sold to the Liew's "the structures were not in compliance with City and County of Honolulu (City and County) ordinances *and that the State failed to disclose the problems with the structures to the Lessee*". When the documents that admit the state failed to inform the Liew's of the known lease violations when assigning the lease to the Liew's are present in the land division files, it constitutes an indisputable fact and not a mere allegation.

The Liews are committed to following the law, rules, and the lease covenants.

The department concealed or aided in the concealment of material facts in 1998 and 1999 (See also Exhibit “5”) and intentionally and knowingly denied responsibility in 2005, 2007, 2012, and 2014, and stills denies any responsibility for knowingly allowing unpermitted and illegal buildings to be sold to the Liews.

THERE HAS NEVER BEEN A FAIR MEETING OF THE MINDS

There has never been a fair settlement negotiation of the Liews complaint. Every negotiation relied on the Liews fear of losing their prior investment in the property and was always conducted under fear of eviction. It is unconscionable that the DLNR can escape all liability for LUO violations that were present before Liews’ purchased the lease and the DLNR is unjustly enriched by the correction of the violations without compensating the Liews even one dollar for their costs.

The 2014 negotiations also failed because of the unrecorded DOA irrigation pipeline easement which prevented the combining of buildings #3 and #4. New plans had to be drawn and filed with additional “double fee penalty” imposed by the city resulting in additional delay.

The Liews faced an unconscionable dilemma on December 12, 2014. They were under extreme duress in that their lease was already cancelled and if they did not agree to pay for the appraisal costs (that set reasonable rent at \$10,200 pursuant to HRS § 171-17(d)), abandon the rent arbitration, and pay rent at \$22,800 per year, in addition to correcting any remaining city LUO violations at their cost, they would forfeit tens of thousands of dollars in financial investment and incalculable hours of their labor.

NEW PROPOSED SETTLEMENT

It is my opinion that the members have only this opportunity to resolve the issues surrounding the Liews without extended litigation.

The Liews propose:

1. The DLNR sign off on the CUP application electronically submitted to Land Agent Cheung on October 27, 2020. The department shall also approve a Windward Soil and Water Conservation District Plan scheduled to be prepared by the NRCS in January of 2021 (if that plan is ready for approval before this lease is transferred to the DOA). Approve the septic installation for which prior board approval (2012) has been effectively revoked by land division in May of 2020.

2. Accept the 2013 arbitrated appraisal pursuant to HRS 171-17(d) and set the rent accordingly giving Liews credit for overpayment as promised by Land Division Administrator Russell Y. Tsuji by letter dated February 8, 2013¹. (**Exhibit “8”**).

3. Declare all remaining issues as being in “substantial compliance” and use the department’s best efforts to correct the portrayal of the Liews as bad tenants and thereby cause or assist the transfer of the lease to the Department of Agriculture where a new “clean” lease shall be executed.

THANK YOU FOR THE OPPORTUNITY TO TESTIFY in this matter. I am available to answer your questions.

Sincerely,

Joseph Ryan, Jr.
Attorney for Lessees

¹ With Board approval a “Second Extension of General Lease No. S-4398” was executed on April 1st, 2013 extending the time for arbitration of lease rent “up to and including September 13, 2013”. Arbitration Panel Chair, George Hao concluded and submitted his final and binding appraisal by letter dated July 15, 2013. Land Division Administrator Russell Tsuji “accepted and approved” the arbitrated appraisal value of \$10,200 on October 1, 2013. No explanation of the delay between July 15 and October 1 has ever been offered or discovered to explain why the arbitration acceptance exceeded the September 13 time extension.

EXHIBIT 1

July 13, 1995

Mr. Cecil B. Santos, Oahu District Land Agent
State of Hawaii, Department of Land and Natural Resource
Division of Land Management
1151 Punchbowl Street, Rm. 220
Honolulu HI 96813

Dear Mr. Santos:

Re: General Lease No. S-4298, 41-909 Mahailua Street, Waimanalo

We are confirming our observations and agreement from our joint visit to the subject property on July 12, 1995. The purpose of this visit was to identify lease violations and corrective actions which would be acceptable to the State. The lease violations and corrective actions noted below were the only ones brought to our attention. We assume the Rural Economic and Community Development (RECD) will convey the leasehold interest to another party without leasehold violations when the corrective actions below are completed.

The four violations identified were:


1. There are buildings on the property constructed without building permits.
We agreed to look into obtaining building permits for all major structures on the property that were constructed without permits. We will make application if we are allowed to do so. All of these structures were in place before the lease was assigned to the U. S. Government. The three structures identified were the warehouse, two greenhouses and one house.
2. Wooden pallets stacked below the large greenhouse must be removed.
3. Move existing dirt piles located in the cut area against the cut to minimize the angle of the cut.
4. Two old vans and debris around vans must be removed.

Mr. Cecil B. Santos, Oahu District Land Agent
General Lease No. S-4298, 41-909 Mahailua Street, Waimanalo
July 13, 1995
Page 2

We were made aware of an easement located on the upper road for a drainage line and irrigation water line. The exact location and description of the easement has not been incorporated in any map or the lease at this time.

You may call me at 541-2588 if there are any comments or questions.

Sincerely,


DONALD K. OKIMOTO
Loan Resolution Specialist

cc: Acting State Director, RECD, Attn: Acting Farmer Program Chief, Hilo, HI
Lawrence Hom, Office of General Counsel (OGC), San Francisco, CA

EXHIBIT 2

Ref: LM:CEC

Mr. Donald K. Okimoto
Loan Resolution Task Force
United States Department of
Agriculture
P.O. Box 50224
Honolulu, Hawaii 96850

JUL 20 1995

Dear Mr. Okimoto:

SUBJECT: Outstanding Lease Requirements, General Lease No.
S-4298, S & S Plants Inc., Waimanalo, Oahu, TMK:
4-1-10:03

Pursuant to our inspection of the leasehold on July 12, 1995 along with yourself, we came across four (4) violations of the lease terms.

The first violation was the piling up of old unusable skiffs that was accumulated over a period. These skiffs are now waste debris and need to be removed from the leasehold.

The second violation was the junking of old trucks and equipment at the site that I pointed out to you. This is not the storing of equipment but the storage of derelict vehicles, junk and debris. Please remove all of these derelict equipment and debris from the leasehold.

The third deficiency was a violation of Item No. 6 of General Lease No. S-4298, waste and unlawful, improper or offensive use of the premises. This is the hauling away of dirt from the leasehold. Please stop this operation and move the excavated dirt pile back up against the ground level where the dirt was being excavated from.

The fourth deficiency was that the warehouse and the shade house were built without government building permits. Please acquire after-the-fact building permits within sixty (60) days.

Mr. Donald K. Okimoto
Page 2

Please have the first, second, and third items done within thirty (30) days of the date of this letter. Should you have any questions, please call us at 587-0433.

Yours truly,



CECIL SANTOS

Oahu District Land Agent

cc: Mr. C. Matsumoto
Mr. M. Nekoba

EXHIBIT 3

United States
Department of
Agriculture

Loan
Resolution
Task Force

RECEIVED
DIVISION OF
LAND MANAGEMENT
Jul 26 3 28 PM '95

(S+S Plants)
P.O. Box 50224
Honolulu, HI 96850
(808) 541-2588 (Fax) 541-3694

July 25, 1995

Case 1105
Mr. Cecil B. Santos, Oahu District Land Agent
State of Hawaii, Department of Land and Natural Resources
Division of Land Management
1151 Punchbowl Street, Rm. 220
Honolulu HI 96813

Dear Mr. Santos:

Re: General Lease No S-4298

We are in receipt of your letter dated July 20, 1995, regarding subject lease. Mr. Steven S. Saiki has been instructed to remove the items mentioned in the first and second lease violations. Mr. Richard Lee will work with your department to cure the third violation. We may have difficulty obtaining "after the fact" building permits within the sixty (60) day time frame allowed to cure the fourth violation. According to Mr. Harry Hayase of the City and County of Honolulu, Building Department, detailed drawings and specifications are required to be included with the application for building permits. Also, the drawings must be approved by a structural engineer and meet today's building codes. Therefore, we are requesting additional time to determine the cost of completing these requirements.

Please check your files for copies of construction plans for all structures on the property. It will greatly assist us in determining building codes and the materials used in the construction of these buildings.

You may call me at 541-2588 should you have any questions.

Sincerely,

Donald K. Okimoto
DONALD K. OKIMOTO
Loan Resolution Specialist

cc: State Director, RECD, Hilo, HI
Lawrence Hom, Office of General Counsel (OGC), San Francisco, CA

EXHIBIT 4

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII



MICHAEL D. WILSON
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

DEPUTY
GILBERT S. COLOMA-AGARAN

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P.O. BOX 621
HONOLULU, HAWAII 96809

APR 21 1997

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND DIVISION
STATE PARKS
WATER RESOURCE MANAGEMENT

Ref:LD:CBS

Mr. Donald K. Okimoto
Agriculture Credit Specialist
Farm Service Agency, USDA
P. O. Box 50065
Honolulu, Hawaii 96850

Dear Mr. Okimoto:

Subject: Third Extension, Notice of Default, General
Lease No. S-4298, Waimanalo, Oahu, TMK: 4-1-10:03

Per your request made over the telephone on April 15, 1997, you have requested another extension to the Notice of Default served on the Farm Service Agency, USDA on October 15, 1996. The cure period was sixty days. The Default was for the violation of the Assignment Provision of General Lease No. S-4298.

Mr. Steve Saiki who was the former lessee still occupied the leasehold and during this occupation two illegal cockfights were held on this site. At the second event within the leasehold on April 27, 1996 four adults were arrested on First Degree Gambling charges and over \$100,000.00 were recovered from the arrest.

On November 25, 1996, you served Mr. Steven S. Saiki with a "Demand to Vacate Property" with a thirty (30) days period to vacate the leasehold. On November 22, 1996 you requested an extension of our Notice of Default for sixty (60) days which we provided until February 12, 1997. On February 7, 1997 you requested another extension which we provided up until April 14, 1997.

Per telephone conversation with Cecil Santos of the Oahu Land District on April 15, 1997, you informed him that you now have turned over the paperwork and request for eviction to the Federal Attorney General's Office here in Honolulu on about April 13, 1997 and now request another extension.

Please understand that we will provide another extension for sixty (60) days but after that we will go to the Land Board to request cancellation if the former Lessee is still on the leasehold.

Mr. Donald K. Okimoto
Farm Service Agency, USDA
Page 2

We are extending the cure period on our Notice of Default dated October 11, 1996, ~~another~~ sixty (60) days from April 14, 1997 until June 14, 1997.

Should you have any questions, you may call Cecil Santos of the Oahu Land District at 587-0433.

HAWAII:Earth's Best!

Aloha,


MICHAEL D. WILSON

c: Mr. C. Matsumoto
Mr. M. Nekoba *CS*

EXHIBIT 5



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 621
HONOLULU, HAWAII 96809

TO: Central
FROM: OOLG
No.: 4298
AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND DIVISION
STATE PARKS
WATER RESOURCE MANAGEMENT

February 12, 2001

Mr. & Mrs. Walter Liew
41-909 Mahaiula Street
Waimanalo, Hawaii 96795

Dear Mr. & Mrs. Liew:

Subject: General Lease No. S-4298, Lot 20, Waimanalo Agricultural Subdivision,
Waimanalo, Koolaupoko, Oahu, Tax Map Key: 4-1-10:3

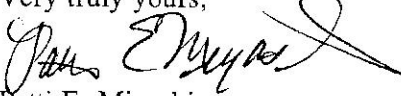
Thank you for meeting with Al Jodar and myself on Thursday, February 8, 2001 at the subject site for our annual site inspection. We have noted that the lease area is being maintained in satisfactory condition.

However, while on our walk around the property, we noticed a fallen structure, which you explained was due to termites. For your safety and since your lease states that the lessee shall keep the demised premises and improvements in a strictly clean, sanitary, and order condition, please remove the fallen structure within 45 days from the date of this letter. Please contact this office when the structure has been completely removed, so that we may conduct a follow-up visit.

Also during our visit you asked how the rent was determined for your lease, specifically how much you are paying for the land beyond the stream which you are unable to access at this time. As we explained, you are welcomed and encouraged to review you lease file in our office. If after reviewing the file you still have questions regarding the rental determination, you may make an appointment to discuss this matter with one of our staff appraisers.

Should you have any questions, please feel free to call me at 587-0410 or Al Jodar at 587-0424.

Very truly yours,


Patti E. Miyashiro
Land Agent

c: Land Board Member
Central Files
District Files

4

EXHIBIT 6

**SCHEDULE F
(Form 1040)**Department of the Treasury
Internal Revenue Service (99)
Name of proprietor**Profit or Loss From Farming**▶ Attach to Form 1040, Form 1041, Form 1065, or Form 1065-B.
▶ See Instructions for Schedule F (Form 1040).

OMB No. 1545-0074

2004Attachment
Sequence No. **14**

DRAGON GARDEN

Social security number (SSN)
576-94-6754**A** Principal product. Describe in one or two words your principal crop or activity for the current tax year.

BONSAI PLANTS

B Enter code from Part IV
111400**C** Accounting method: (1) ☒ Cash (2) ☐ Accrual**D** Employer ID number (EIN), if any**E** Did you "materially participate" in the operation of this business during 2004? If "No," see page F-2 for limit on passive losses.☒ Yes ☐ No**Part I Farm Income - Cash Method. Complete Parts I and II (Accrual method taxpayers complete Parts II and III, and line 11 of Part I.)**
Do not include sales of livestock held for draft, breeding, sport, or dairy purposes; report these sales on Form 4797.

1	Sales of livestock and other items you bought for resale	1		
2	Cost or other basis of livestock and other items reported on line 1	2		
3	Subtract line 2 from line 1	3		
4	Sales of livestock, produce, grains, and other products you raised	4		149300.
5a	Total cooperative distributions (Form(s) 1099-PATR)	5a		
5b	Taxable amount	5b		
6a	Agricultural program payments (see page F-2)	6a		
6b	Taxable amount	6b		
7	Commodity Credit Corporation (CCC) loans (see page F-3):			
a	CCC loans reported under election	7a		
b	CCC loans forfeited	7b		
7c	Taxable amount	7c		
8	Crop insurance proceeds and certain disaster payments (see page F-3):			
a	Amount received in 2004	8a		
8b	Taxable amount	8b		
c	If election to defer to 2005 is attached, check here <input type="checkbox"/>	8d		
8d	Amount deferred from 2003	8d		
9	Custom hire (machine work) income	9		
10	Other income, including Federal and state gasoline or fuel tax credit or refund (see page F-3)	10		
11	Gross income. Add amounts in the right column for lines 3 through 10. If accrual method taxpayer, enter the amount from page 2, line 51	11		149300.

Part II Farm Expenses - Cash and Accrual Method. Do not include personal or living expenses such as taxes, insurance, repairs, etc., on your home.

12	Car and truck expenses (see page F-4 - also attach Form 4562)	12	1769.	25	Pension and profit-sharing plans	25	
13	Chemicals	13		26	Rent or lease (see page F-5):		
14	Conservation expenses (see page F-4)	14		a	Vehicles, machinery, and equipment	26a	
15	Custom hire (machine work)	15		b	Other (land, animals, etc.)	26b	13200.
16	Depreciation and section 179 expense deduction not claimed elsewhere (see page F-4)	16		27	Repairs and maintenance	27	
17	Employee benefit programs other than on line 25	17		28	Seeds and plants purchased	28	
18	Feed purchased	18		29	Storage and warehousing	29	
19	Fertilizers and lime	19		30	Supplies purchased	30	
20	Freight and trucking	20		31	Taxes	31	
21	Gasoline, fuel, and oil	21		32	Utilities	32	
22	Insurance (other than health)	22	3520.	33	Veterinary, breeding, and medicine	33	
23	Interest:			34	Other expenses (specify):		
a	Mortgage (paid to banks, etc.)	23a	31590.	a	SEE STATEMENT 2	34a	74094.
b	Other	23b		b		34b	
24	Labor hired (less employment credits)	24		c		34c	
				d		34d	
				e		34e	
				f		34f	
35	Total expenses. Add lines 12 through 34f	35					124173.
36	Net farm profit or (loss). Subtract line 35 from line 11. If a profit, enter on Form 1040, line 18, and also on Schedule SE, line 1. If a loss, you must go on to line 37 (estates, trusts, and partnerships, see page F-6)	36					25127.

37 If you have a loss, you must check the box that describes your investment in this activity (see page F-6).

- If you checked 37a, enter the loss on Form 1040, line 18, and also on Schedule SE, line 1.
- If you checked 37b, you must attach Form 6198.

37a ☐ All investment is at risk.
37b ☐ Some investment is not at risk.

LHA For Paperwork Reduction Act Notice, see Form 1040 instructions.

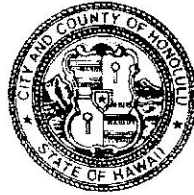
Schedule F (Form 1040) 2004

EXHIBIT 7

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honoluluodpp.org • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

(CI)

October 1, 2020

Joseph Ryan, Jr., Esq.
Attorney at Law, LLLC
41-430 Waikupanaha Street
Post Office Box 562
Waimanalo, Hawaii 96795

Dear Mr. Ryan:

Thank you for your letter dated September 11, 2020, requesting investigation and relief for Mr. Walter Liew of 41-909 Mahailua Street in Waimanalo.

On April 19, 2004, the Department of Planning and Permitting (DPP) issued Notice of Violation (NOV) Nos. 2004/NOV-04-141 and 2004/NOV-04-143 to the fee owner, the State Department of Land and Natural Resources (DLNR), and to the lessees, Walter and Ann Liew.

NOV No. 2004/NOV-04-141 was issued for greenhouses, workshops, an office building, three dwelling units, a bonsai studio, and a six-foot chain link fence on the property that were constructed without building permits. On August 8, 2018, the NOV was corrected when an inspection revealed the workshops, office building and one dwelling was demolished; Building Permit Nos. 718954, 768318, and 754105 were obtained for the bonsai studio, farm dwelling, and the fence; and Act 203 was amended by the State Legislature to exempt agricultural buildings from County permit requirements, thus the greenhouses did not require permits.

NOV No. 2004/NOV-04-143 was issued for agribusiness activities being conducted on this AG-1 Agricultural zoned property without a Conditional Use Permit. The activities included the growing of bonsai, water lilies, and orchids for sale to stores and private buyers, as well as charging for a viewing area of the plants. Also, instructional classes about the cultivation and care of bonsai were being conducted by the Liewes and the University of Hawaii's Horticulture Department.

Joseph Ryan, Jr., Esq.
October 1, 2020
Page 2

On March 17, 2005, an inspection revealed the activities ceased and the NOV was corrected.

The DPP considers these matters closed. Any dispute between the Liews, the DLNR, and the United States Department of Agriculture is a civil matter between these parties.

Should you have any questions, please contact Catherine Weinhardt, Chief of our Residential Code Enforcement Branch, at 768-8161.

Very truly yours,


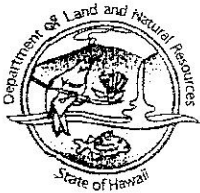

Wallace J. Carvalho
Program Administrator
Customer Service Division

EXHIBIT 8

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.
INTERIM 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

February 8, 2013

Mr. & Mrs. Walter Liew
41-909 Mahailua Street
Waimanalo, Hawaii 96795

Ref No.: 12od-021

Dear Mr. & Mrs. Liew:

Subject: Arbitration of Extension of Lease Term Offer Letter, General Lease No. S-4298,
Waimanalo, Koolau-poko, Oahu; TMK (1) 4-1-010:003

We are in receipt of your response to our Extension of Lease Term Offer Letter dated July 16, 2012. In your response letter you indicated that you were rejecting our new rent of \$21,800 per annum for the period commencing February 10, 2012 to February 11, 2022 and have selected Andrew Rothstein, MAI, for arbitration purposes. According to §171-17(d) of Hawaii Revised Statutes, the arbitration process involves the following:

"...should the lessee fail to agree upon the fair market rental, the lessee may appoint the lessee's own appraiser who together with the board's appraiser shall appoint a third appraiser and the fair market rental shall be determined by arbitration as provided in Chapter 658A. The lessee shall pay for the lessee's own appraiser, the board shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the lessee and the board. Any language in present leases to the contrary notwithstanding, the provisions of this subsection, when possible and notwithstanding the six-month notice required, shall apply to leases with original lease rental reopening dates effective before and after July 1, 1996."

Furthermore, according to §171-17(e), "Whenever more than one appraiser is appointed each shall prepare and submit an independent appraisal." All appraisal reports shall be available for study by the public.



Please have Mr. Rothstein contact Craig Leong, MAI, of Appraisal Hawaii Inc. to proceed with the arbitration process according to the Ground Lease, as amended. Please understand that you will be paying for the cost of your own appraiser and half the cost of a third appraiser. Mr. Rothstein must complete his appraisal report and provide it to Mr. Leong within 45 days of Mr. Rothstein's appointment of November 28, 2012.

Additionally, under the terms of the Lease, as amended, you are required to pay the new appraised rent pending the outcome of the rent arbitration process. Our records show you paid rent for the period of February 12, 2012 through February 11, 2013 at the old rate of \$15,000 per year. We will

EX-111

J-1

Mr. & Mrs. Walter Liew
February 8, 2013
Page Two

 instruct our fiscal office to change your annual rent to \$21,800 effective February 10, 2012 until which time the arbitration process is completed and the new rent is determined and, if necessary, any adjustment to the annual rent will be made at that time. Accordingly, there is outstanding a balance of approximately \$6,800 in annual rent for 2012 thru 2013 and another \$6,800 for 2013 thru 2014 for an aggregate of approximately \$13,600 to remain in good standing on your account. 

If you have any questions regarding these requirements, please contact our Appraisal Section at (808) 587-0417.

Very truly yours,



RUSSELL Y. TSUI
Land Division Administrator

cc: Mr. Andrew H. Rothstein, MAI
Oahu District Branch
Central Files

J-2

EXHIBIT 9



ALU SERVICES LLC

P.O. Box 545 • Kailua, HI 96734

Ph: (808) 261-1174

Fax: (808) 664-0034

COPY

Invoice #8251

Date: April 29, 2019

Client: Eastside Masonry

Attention: Kauai

Job Location: Bonsai Farms, Waimanalo, HI

I HEREBY AUTHORIZE THE FOLLOWING SERVICES:

- 4/25/19 - (1) Load concrete hauled to PVT = \$800.00

Note: This load was dumped at PVT under Eastside Masonry

Total = \$800.00

Tax = \$37.69

Total Due = \$837.69

*DD - 5 to
Health Department
copy to
DLNA
may 5/19*

This work is fully covered by property damage, public liability and compensation insurance for the complete protection of our clients and release. ALU Services will not be held liable for damage to property not visible where not specifically mentioned herein, especially underground installations.

Authorized signature _____

Client signature _____

Billing Information: Make checks payable to **ALU Services LLC**

PAID

EXHIBIT 10

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-4298

THIS INDENTURE OF LEASE, made this 12th day of
March, 1970, by and between the STATE OF HAWAII,
hereinafter referred to as the "LESSOR", by its Board of Land
and Natural Resources, called the "BOARD", and
AMBROSE J. ROSEHILL and FREDERICK J. TITCOMB,
business
whose ~~residence~~ and post office address is 806 City Bank
Building, Honolulu, Hawaii 96813,
hereinafter referred to as the "LESSEE";

WITNESSETH:

THAT, the Lessor for and in consideration of the
rent to be paid and of the terms, covenants and conditions herein
contained, all on the part of the Lessee to be kept, observed
and performed, does hereby demise and lease unto the Lessee, and
the Lessee does hereby lease and hire from the Lessor the prem-
ises known as Lot 20, Waimanalo Agricultural Subdivision,
Waimanalo, Koolaupoko, Oahu, Hawaii,
more particularly described in Exhibit "A" and shown on the map
marked Exhibit "B", hereto attached and made parts hereof.

TO HAVE AND TO HOLD the demised premises unto the Les-
see for the term of twenty (20) years, commencing on the
12th day of March, 1970, up to and including
the 11th day of March, 1990, unless sooner
terminated as hereinafter provided, the Lessor reserving and
the Lessee yielding and paying to the Lessor at the Office of
the Department of Land and Natural Resources, Honolulu, Oahu,
State of Hawaii, a net annual rental as provided hereinbelow,

EXHIBIT 4



payable in advance, but not more than one year in advance, without notice or demand, in annual installments on the 12th day of March of each and every year during said term as follows:

A. For the ^{term of} ~~first~~ twenty (20) years, the sum of THREE THOUSAND SIX HUNDRED AND NO/100 DOLLARS (\$ 3,600.00) per annum.

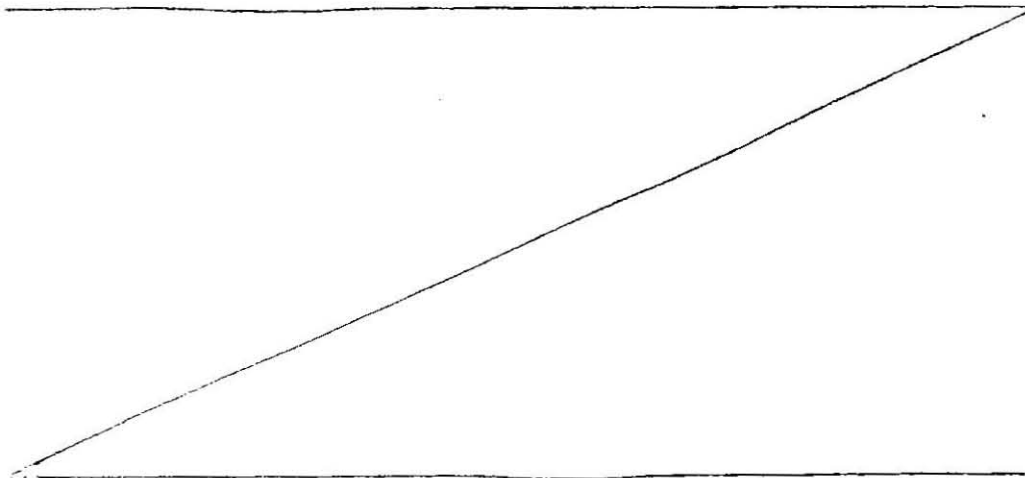
~~B. The annual rental hereinabove reserved shall be reopened and redetermined at the expiration of the _____ year(s) of said term. The rental for any ensuing rental period shall be the rental for the immediately preceding rental period or the fair market rental at the time of reopening, whichever is higher. The fair market rental shall be determined by an appraiser whose services shall have been contracted for by the Lessor; provided that should the Lessee fail to agree to such fair market rental, Lessee may appoint its own appraiser who, together with the Lessor's appraiser, shall promptly appoint a third appraiser and the fair market rental shall be determined by arbitration as provided by Section 658-1, Hawaii Revised Statutes. The Lessee shall pay for the services of its own appraiser and the cost for the services of the third appraiser shall be borne equally by the Lessor and Lessee.~~

RESERVING UNTO THE LESSOR THE FOLLOWING:

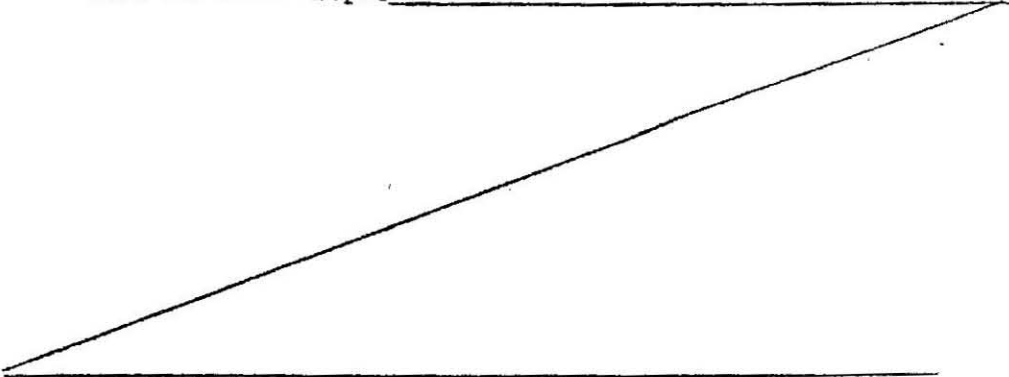
1. Minerals and waters. (a) All minerals as herein-after defined, in, on or under the demised premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining.

"Minerals", as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on or under the land; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in road construction in furtherance of the Lessee's permitted activities on the demised premises and not for sale to others. (b) All surface and ground waters appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the demised premises as may be required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Prehistoric and historic remains. All prehistoric and historic remains found on said demised premises.



2. Withdrawal. The right to withdraw the demised land, or any portion thereof, at any time during the term of this lease upon the giving of reasonable notice by the Board and without compensation, except as provided herein, for public uses or purposes, including residential, commercial, industrial or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the demised premises; provided, that upon such withdrawal, or upon such taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of such withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of the lease; provided, further, that no such withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the Board pays to the Lessee the value of such crops.



The Lessor hereby covenants and agrees with the Lessee that upon payment of the said rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms and conditions hereof on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess and enjoy the demised premises for the term hereby demised, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through and under it.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. That the Lessee shall pay said rent to the Lessor at the times, in the manner and form aforesaid and at the place specified above, or at such other place as the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. That the Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which said demised premises or any part thereof, or any improvements thereon, or the Lessor or Lessee in respect thereof, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during said term.

3. Utility services. That the Lessee shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges,

as to which said demised premises, or any part thereof, or any improvements thereon or the Lessor or Lessee in respect thereof may during said term become liable, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. That the use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color or national origin.

5. Sanitation, etc. That the Lessee shall keep the demised premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. That the Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the demised premises, or any part thereof, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on said premises.

7. Compliance with laws. That the Lessee shall comply with all of the requirements of all municipal, state and federal authorities and observe all municipal ordinances and state and federal statutes, pertaining to the said premises, now in force or which may hereinafter be in force.

8. Inspection of premises. That the Lessee will permit the Lessor and its agents, at all reasonable times during the said term, to enter the demised premises and examine the state of repair and condition thereof.

9. Improvements. That the Lessee shall not at any time during said term construct, place, maintain and install on said premises any building, structure or improvement of any kind and description whatsoever except with the prior approval of the

Board and upon such conditions as the Board may impose, including any adjustment of rent, unless otherwise provided herein.

10. Repairs to improvements. That the Lessee shall, at its own expense, keep, repair and maintain all buildings and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. That the Lessee will not commit or suffer any act or neglect whereby the demised premises or any improvement thereon or the estate of the Lessee in the same shall become subject to any attachment, lien, charge or encumbrance whatsoever, except as hereinafter provided, and shall indemnify and hold harmless the Lessor from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

12. Character of use. That the Lessee shall use or allow to be used the premises hereby demised solely for _____ agriculture, general _____ purpose(s).

13. Assignments, etc. That the Lessee shall not transfer, assign or permit any other person to occupy or use the said premises or any portion thereof, or transfer or assign this lease or any interest therein, either voluntarily or by operation of law, except by way of devise, bequest or intestate succession, and any transfer or assignment so made shall be null and void; provided, that with the prior written approval of the Board the assignment and transfer of this lease or unit thereof may be made if (1) it contains the personal residence of the Lessee; (2) in the case of commercial, industrial, hotel, resort, apartment and other business uses, the Lessee was required to put in substantial building improvements; (3) the Lessee becomes mentally or physically disabled; (4) extreme economic hardship is

demonstrated to the satisfaction of the Lessor or (5) it is to the corporate successor of the Lessee.

14. Subletting. That the Lessee shall not rent or sublet the whole or any portion of the demised premises, without the prior written approval of the Board; provided, however, that prior to such approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the said sublessee; provided, further, that the rent may not be revised downward.

15. Mortgage. That, except as provided herein, the Lessee shall not mortgage, hypothecate or pledge the said premises or any portion thereof or this lease or any interest therein without the prior written approval of the Board and any such mortgage, hypothecation or pledge without such approval shall be null and void.

16. Indemnity. That the Lessee will indemnify, defend and hold the Lessor harmless (1) from and against any claim or demand by third persons for loss, liability or damage, including claims for property damage, personal injury or wrongful death, arising out of any accident on the demised premises and sidewalks and roadways adjacent thereto or occasioned by any act or nuisance made or suffered on the premises, or by any fire thereon or growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition and will reimburse the Lessor for all costs and expenses in connection with the defense of such claims; (2) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

17. Costs of litigation. That in case the Lessor shall, without any fault on its part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall and will pay all costs and expenses incurred by or imposed on the Lessor, furthermore, the Lessee shall and will pay all costs and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the demised premises or in the collection of delinquent rental, taxes and any and all other charges.

18. Liability insurance. That the Lessee shall procure, at its own cost and expense, and maintain during the entire period of this lease, with an insurance company or companies acceptable to the Lessor, a policy or policies of comprehensive public liability insurance, if and when the same shall be required by the Board, in an amount acceptable to the Board, insuring against all claims for personal injury, death and property damage; that said policy or policies shall cover the entire premises, including all buildings, improvements and grounds and all roadways or sidewalks on or adjacent to the demised premises in the control or use of the Lessee. The Lessee shall furnish the Lessor with a certificate showing such policy to be initially in force and shall furnish a like certificate upon each renewal of such policy, each such certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel any such policy prior to actual cancellation. The procuring of this policy shall not release or relieve the Lessee of its responsibility under this lease as set forth herein or limit the amount of its liability under this lease.

19. Bond, performance. That the Lessee shall, at its own cost and expense, within thirty (30)

days after the date of receipt of this lease document, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by said Lessee of all of the terms, conditions and covenants of this lease, in an amount equal to two times the annual rental then payable. Said bond shall provide that in case of a breach or default of any of the terms, covenants, conditions and agreements contained herein, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

20. Lessor's lien. That the Lessor shall have a lien on all the buildings and improvements placed on the said premises by the Lessee, on all property kept or used on the demised premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings situated on said premises for all such costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee and for the payment of all money as provided in this lease to be paid by the Lessee, and such lien shall continue until the amounts due are paid.

21. Full utilization of the land. That the Lessee shall, at its own cost and expense, within the first (1st) (=) year(s) of the lease term, clear the demised premises of noxious weeds, tend the premises in such a manner as to reduce to a reasonable minimum the danger of erosion or other waste and utilize the land and the whole of it for the purposes for which this lease is sold, all in accordance with a plan of development and conservation which shall be submitted to the Chairman within three (3) months after the date of receipt of this document and approved by him.

22. Good husbandry and conservation practices. That the Lessee shall at all times practice good husbandry with regard to the use of the demised premises for the use herein permitted and shall carry out such practices of conservation and prevention of waste as are recommended by the appropriate Soil and Water Conservation District, with which district the Lessee shall apply for and attain cooperative status. The plan required in the foregoing paragraph shall be with respect to grading and clearing of land, and drainage and irrigation, and shall be developed in cooperation with said Soil and Water Conservation District. In the event the activities of the Lessee in this regard shall be found to be unsatisfactory to the Chairman, the Chairman will so notify the Lessee and the Lessee shall be required, within sixty (60) days of such notice, to cure such fault and submit proof thereof satisfactory to the Chairman.

23. Fences. That the Lessee shall, wholly at its own cost and expense, fence the whole or portion of the outside perimeter of the demised premises if such fencing shall be required by the Lessor, or should be so required by any law now

in force or that may hereafter be enacted, and shall and will maintain in good order and condition throughout the period of this lease the fences so constructed and those now remaining on the demised premises.

24. Exclusion of animals from forest lands. That the Lessee shall at all times during the term hereof keep its cattle, horses and other grazing animals out of any forest reserve, if any, adjacent to the demised premises and shall take all reasonable precautions to prevent forest fires thereon, and in the event such fires shall occur, it shall use all reasonable means at its command or under its control to have such fires speedily extinguished.

~~25. Dwelling restriction. That the Lessee shall not place or construct any dwelling unit in excess of one family dwelling unit on said demised premises and that such dwelling unit shall not be placed or constructed thereon except in accordance with plans and specifications approved by the Chairman of the Board of Land and Natural Resources.~~

26. Surrender. That the Lessee shall, at the end of said term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the demised premises, together with all boundary fences, paddock fences, sewers, drains, roads, bridges and trees on the same; it being understood that if the Lessee shall have faithfully observed and performed all of the terms, covenants and conditions herein, it shall have the right to remove from the demised land all other improvements thereon erected or placed by or belonging to it, including buildings, sheds, water tanks, feed pens, surface pipelines and mechanical equipment, and the Lessee shall, at its own expense, prior to the end of said term or other sooner termination thereof, or within such additional period after the expiration

of said term or other sooner termination thereof as the Lessor may allow, remove the same, together with all the debris therefrom and restore said premises to good order and condition satisfactory to the Lessor. Such improvements remaining on the demised premises after the expiration of the term hereof or other sooner termination thereof or after the elapse of such additional time as the Lessor may allow for their removal, shall become the property of the Lessor; provided, however, that the Lessor, at its option, may require the Lessee to remove such improvements and restore the premises as provided herein.

27. Insurance. That the Lessee will, at its own expense, at all times during the term of this lease, keep insured all buildings and improvements erected on the land hereby demised in the joint names of Lessor, Lessee and Mortgagee, if any, as their interests may appear, against loss or damage by fire including perils specified in the extended coverage endorsement and in an amount equal to the maximum insurable value thereof, in a company or companies approved by the Lessor, and will pay the premiums thereon at the time and place the same are payable; that the policy or policies of insurance shall be made payable in case of loss to the Lessor, Lessee and Mortgagee, if any, as their interests may appear, and shall be deposited with the Mortgagee; and that any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible, be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to the plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage and the Lessee shall then receive that portion of said proceeds which the unexpired term of this lease at the time of said loss or damage bears to the whole of said term, the Lessor to retain the balance of said proceeds.

28. Plans and specifications, approval of. That the Lessee shall submit all construction plans to the Chairman of the Board of Land and Natural Resources for approval before proceeding with construction.

All construction shall be of masonry or of new materials or of used materials properly treated for termite control as provided herein. In lieu of construction, with the approval of the Chairman, second-hand buildings may be moved onto the premises provided such buildings are of a type, form and condition acceptable to the Chairman and are repaired and/or remodelled in such a manner that their appearance will not constitute a blight on the area. Prior to the moving onto the premises of any second-hand house or other structure or the building of such house or structure with second-hand materials, the Lessee shall obtain and present to the Lessor a certificate from a bona fide termite extermination company certifying that the second-hand structure and/or materials have been properly treated and are free from termites.

All such construction and/or moving on and posting of buildings on the demised premises shall be done in accordance with the Public Health Regulations of the Department of Health and with the Building Code of the City and County of Honolulu and with any and all other applicable laws, ordinances, rules and regulations of the federal government and of the State of Hawaii and its agencies and political subdivisions.

29. Residence use. That the Lessee may, but shall not be required to, maintain his residence (or that of his agent but not of both of them except as provided herein) on the demised premises; provided, however, that not more than

one single-family dwelling shall be permitted on the demised premises except that the Lessor may, in its discretion, permit one additional dwelling for employee housing if the need for such housing is clearly demonstrated, and construction of such additional dwelling shall require the prior written consent of the Lessor. Such additional dwelling shall be for employee housing only and shall in no case and at no time during the term of this lease be used for rental purposes.

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN
THE PARTIES AS FOLLOWS:

1. Mortgage. That upon due application and with the written consent of the Lessor, the Lessee may mortgage this lease or any interest therein or create a security interest in the public land hereby demised. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, such consent may extend to foreclosure and sale of Lessee's interest at such foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of such mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned Federal agencies.

2. Breach. That time is of the essence of this agreement and if the Lessee shall fail to yield or pay such rent or any part thereof at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the said premises, or if this lease and said premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of

the Lessee's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and such failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of such breach or default by personal service, registered mail or certified mail to the Lessee at its last known address and to each mortgagee or holder of record having a security interest in the demised premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter such premises or any part thereof, and upon or without such entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the property of the Lessor.

3. Right of holder of record of a security interest.

In the event the Lessor seeks to forfeit the interest created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach within sixty (60) days from the date of receipt of the notice hereinabove set forth, or within such additional period as the Lessor may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any monies at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of said debt and mortgage from said holder or if ownership of such interest or estate shall have vested in such holder by way of foreclosure, or action in lieu thereof, the Lessor shall be

entitled to the conveyance of said interest or estate upon payment to said holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with such foreclosure and preservation of its security interest, less appropriate credits, including income received from said interest or estate subsequent to such foreclosure; or (b) terminate the outstanding interest or estate subject to the lien of such mortgage, without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and thereupon use its best efforts to dispose of the land affected thereby to a qualified and responsible person who will assume the obligation of the mortgage and the debt thereby secured; provided, that a reasonable delay by the Lessor in instituting or prosecuting any right or remedy it may have hereunder shall not operate as a waiver of such right or to deprive it of such remedy when it may still hope otherwise to resolve the problems created by the breach or default. The proceeds of any disposition effected hereunder shall be applied, first, to reimburse the Lessor for costs and expenses in connection with such disposition, second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with such interest or estate terminated as aforesaid, and the balance, if any, shall be paid to the owner of such interest or estate.

4. Condemnation. That, if at any time, during the term of this lease, any portion of the demised premises should be condemned for public purposes by the State or any county or city and county or any other governmental agency or subdivision thereof, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value

of growing crops, if any, which he is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the lands occupied by the Lessee. The Lessee shall not by reason of such condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of said leasehold interest by reason of such condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion so taken renders the remainder unsuitable for the uses or uses for which the land was demised, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability therefor; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within such reasonable period as may be allowed by the Lessor.

5. Right to enter. The Lessor shall have the right to itself and to the agents and representatives of the county in which said demised premises are situated, to enter and cross any portion of said demised land for the purpose of performing any public or official duties; provided, however, in the exercise of such rights, the Lessor shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

6. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the demised premises at all reasonable times following a published notice for the proposed disposition of the same for purposes of informing and apprising such person or persons of the condition of said lands preparatory to such proposed

disposition; provided, however, that any such entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no such authorization shall be given more than one year before the expiration of the term of this lease.

7. Acceptance of rent not a waiver. That the acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant or condition of this lease, nor of the Lessor's right to re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any such breach, and the failure of the Lessor to insist upon strict performance of any such term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition or option.

8. Extension of time. That notwithstanding any provision contained herein to the contrary, wherever applicable, the Board may for good cause shown, allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions and covenants contained herein.

9. Justification of sureties. Such bonds as may be required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as such in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or

sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after such period as the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to said Lessor a deed or deeds of trust of real property, all of such character as shall be satisfactory to said Lessor and valued in the aggregate at not less than the principal amount of said bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by the Lessor under the foregoing proviso shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until such consent be granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation hereunder.

10. Waiver, modification, reimposition of bond provision. Upon substantial compliance by the Lessee of the terms, covenants, and conditions herein contained on its part to be observed or performed, the Lessor at its discretion may waive or suspend the performance bond and/or improvement bond requirements or modify the same by reducing the amount thereof; provided, however, that the Lessor reserves the right to reactivate or reimpose said bond and/or bonds in and to their original tenor and form at any time throughout the term of this lease.

As used herein, unless clearly repugnant to the context:

(a) "Chairman" shall mean the Chairman of the Board of Land and Natural Resources of the State of Hawaii or his successor;

(b) "Lessee" shall mean and include the Lessee herein, its heirs, executors, administrators, successors or permitted assigns, according to the context hereof;

(c) "Holder of record of a security interest" is a person who is the owner or possessor of a security interest in the land demised and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of such interest;

(d) "Premises" shall be deemed to include the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon;

(e) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural;

(f) The marginal headings throughout this lease are for the convenience of the Lessor and the Lessee and are not intended to construe the intent or meaning of any of the provisions thereof.


(g) "Waste" shall be deemed to include, but shall not be considered restricted to, (1) suffering the premises or any portion thereof to become unduly eroded and/or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) suffering any material increase in noxious weeds in uncultivated portions thereof and (3) failure to employ all of the usable portions of the demised premises.

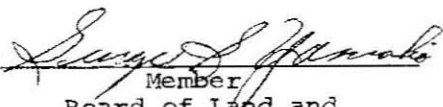
(h) "Noxious weed" shall mean any plant species which is injurious, harmful or deleterious or which may be likely to become so to the agricultural, horticultural and livestock industries of the State, as determined and so designated by the Department of Agriculture of the State of Hawaii from time to time, by rules and regulations.

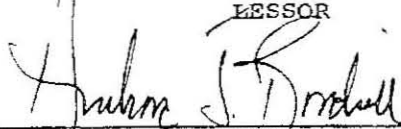
(i) "Agriculture, General" shall mean the cultivation of truck, orchard, flower or nursery crops and/or the pasturing keeping, breeding, training and care of horses and cattle but not of swine, sheep and goats.

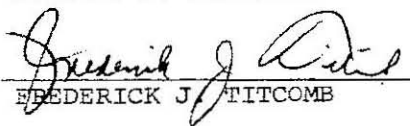
IN WITNESS WHEREOF, the STATE OF HAWAII, the Lessor
herein, by its Board of Land and Natural Resources, has caused
the seal of the Department of Land and Natural Resources to be
hereunto affixed and these presents to be duly executed this
15th day of April, 19~~70~~⁷¹, and _____
AMBROSE J. ROSEHILL and FREDERICK J. TITCOMB,
the Lessee herein, has caused these presents to be executed this
14th day of April, 19~~70~~⁷¹, both effective on
the day and year hereinabove set forth.

STATE OF HAWAII

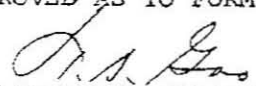
By: 
Chairman and Member
Board of Land and
Natural Resources

And By: 
Member
Board of Land and
Natural Resources

LESSOR

AMBROSE J. ROSEHILL


FREDERICK J. TITCOMB
LESSEE

APPROVED AS TO FORM:


Deputy Attorney General

Dated: 6-19-70

STATE OF HAWAII)
 : ss
CITY & COUNTY OF HONOLULU)

On this 7th day of April, 1970, *WJP*

before me personally appeared AMBROSE J. ROSEHILL and
FREDERICK J. TITCOMB, to me known to be the
person(s) described in and who executed the foregoing instru-
ment and acknowledged that they executed the same as their
free act and deed.

Shirley K. Paulina
Notary Public, 1st Judicial
Circuit, State of Hawaii.

My Commission expires: 11-15-71

STATE OF HAWAII)
 : ss
COUNTY OF)

On this _____ day of _____, 19____,
before me appeared _____ and
_____, to me personally known,
who, being by me duly sworn, did say that they are the
_____ and _____,
respectively, of _____,
and that the seal affixed to the foregoing instrument is the
corporate seal of said corporation, and that said instrument
was signed and sealed on behalf of said corporation by au-
thority of its Board of Directors, and the said _____
_____ and _____ acknowledged
that they executed said instrument as the free act and deed of
said corporation.

Notary Public, _____ Judicial
Circuit, State of Hawaii.

My Commission expires: _____

mm
Proofed by: *LV*

ADDENDUM

IT IS FURTHER AGREED AS FOLLOWS:

Improvement assessment:

The Lessee shall pay the sum of THREE THOUSAND
SEVEN HUNDRED FIFTY-FIVE DOLLARS (\$ 3,755.00),
representing partial recovering of development costs. Said
sum shall be paid as follows:

- (a) Ten percent (10%) of the above at the fall
of the hammer;
- (b) Fifteen percent (15%) of the above sum within
thirty (30) days from the date of sale;
- (c) Balance within one (1) year from the date of
sale or when any mortgage is executed by the
Lessee, whichever is sooner; and
- (d) No interest on the above sum shall be charged.



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

April 19, 1963

C.S.F. No. OAHU FILE
CARTON 58

WAIMANALO AGRICULTURAL SUBDIVISION

LOT 20

Waimanalo, Koolaupeke, Oahu, Hawaii

- Being a portion of the Government (Crown) Land of Waimanalo and R.P. 6346 L.C.Aw. 234-K Apana 2 to Piimoku conveyed to the Territory of Hawaii by Alexander Mah Kong Young and Betty Omizo Young by Exchange Deed dated January 19, 1959 and recorded in Book 3568 Page 57. (Land Office Deed 15646).

Beginning at the northeast corner of this lot, the south corner of Lot 19 of Waimanalo Agricultural Subdivision and on the west side of Mahailua Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAIMANALO RIDGE" being 7455.79 feet South and 827.84 feet West, as shown on Government Survey Registered Map 4114, thence running by azimuths measured clockwise from True South:-

1. Along the west side of Mahailua Street, on a curve to the left with a radius of 1022.00 feet, the chord azimuth and distance being: $19^{\circ} 57' 53''$ 185.18 feet;
2. $14^{\circ} 46'$ 264.26 feet along the west side of Mahailua Street;
3. Thence along the north or makai side of the Easement for Maunawili Ditch, parallel to and 15.00 feet from the centerline of Maunawili Ditch, the direct azimuth and distance being: $113^{\circ} 02' 30''$ 1377.62 feet;
4. $215^{\circ} 25' 30''$ 463.20 feet along Slaughter House Lot;
5. $314^{\circ} 00'$ 50.80 feet along R.P. 939, L.C.Aw. 234-M to Pulu;
6. $279^{\circ} 00'$ 92.40 feet along R.P. 939, L.C.Aw. 234-M to Pulu;
7. $177^{\circ} 40'$ 69.30 feet along R.P. 939, L.C.Aw. 234-M to Pulu;

EXHIBIT "A"

April 19, 1963

- 2 -

- | | | |
|-----|----------|--|
| 8. | 191° 00' | 60.70 feet along R.P. 939, L.C.Aw. 234-M to Pulu; |
| 9. | 220° 00' | 50.00 feet along R.P. 939, L.C.Aw. 234-M to Pulu; |
| 10. | 302° 10' | 1135.40 feet along Lot 19 of Waimanalo Agricultural Subdivision to the point of beginning and containing an Area of: 15.587 Acres. |

Reserving to the State of Hawaii, its successors and assigns, in perpetuity, the waters and all riparian and other rights in and to that portions of the streams within the above-described Lot 20, as shown on plan attached hereto and made a part hereof.

Subject also to building set-back lines as shown on plan attached hereto and made a part hereof.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Akira Taga
Akira Taga
Land Surveyor

gjd/ac

Compiled from Gov't
Survey Reg. Map 4114



CERTIFICATION

I hereby certify that the foregoing document
is a true and correct copy of the document
on file in the State Department of Land and
Natural Resources, Land Division at the
Kalanimoku Building, 1151 Punchbowl St.,
Rm. #220, Honolulu, Hawaii.

5.19.14 
Date  Land Division Administrator

EXHIBIT 5

RECORDATION REQUESTED BY:

ORIGINAL

AFTER RECORDATION, RETURN TO:

UNRECORDED

RETURN BY: MAIL () PICKUP ()

EXTENSION OF GENERAL LEASE NO. S-4298

THIS AGREEMENT, entered into this 5th day of October, 19 88, between the STATE OF HAWAII, by its Board of Land and Natural Resources, hereinafter referred to as the "LESSOR," and S & S PLANTS, INC., a Hawaii corporation, whose business and post office address is 41-909 Mahailua Street, Waimanalo, Hawaii 96795, the "LESSEE,"

WITNESSETH:

WHEREAS, by General Lease No. S-4298, dated March 12, 1970, which by mesne assignments was assigned to the Lessee, the Lessor leased and demised Lot 20, Waimanalo Agricultural Subdivision, Waimanalo, Koolaupoko, Oahu, Hawaii, containing an area of 15.587 acres, subject to the terms, covenants and conditions set forth in the lease; and

WHEREAS, the Board of Land and Natural Resources is authorized under the provisions of Section 171-36(b)(3), Hawaii Revised Statutes, or as amended, to modify or eliminate any of the foregoing restrictions of a lease to the extent necessary to qualify the lease for mortgage lending or guaranty purposes; and

WHEREAS, the Board of Land and Natural Resources at its meeting held on February 12, 1988, agreed to the extension of General Lease No. S-4298 with the additional provisions as hereinafter contained.

CERTIFICATE FILED
5 4 1 8 7 6



NOW, THEREFORE, in consideration of the rents, covenants and conditions contained herein and in General Lease No. S-4298, the Lessor hereby extends the term of the lease for an additional twenty-three (23) years, up to and including March 11, 2013, upon the following terms and conditions:

1. The provisions, terms, conditions, and covenants contained in General Lease No. S-4298 are continued in full force and effect until the termination date of this Extension of General Lease Agreement; provided, however, that where any of the provisions of this Extension of General Lease Agreement conflict with the provisions of the General Lease, this Extension shall control and govern.

2. The Lessee shall pay the annual rent of SIX THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$6,400.00) on February 12th of each and every year during the term as follows:

A. For the first ten (10) years, the sum of SIX THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$6,400.00) per annum.

B. The annual rental hereinabove reserved shall be reopened and redetermined at the expiration of the 10th and 20th years of the term.

C. Determination of rental upon reopening of the annual rental. The rental for any ensuing period shall be the fair market rental at the time of reopening. Except as provided herein, the provisions in Hawaii Revised Statutes, Chapter 658, shall be followed. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by the Lessor, and the Lessee shall be promptly notified by certified mail, return receipt requested, of the fair market rental as determined by Lessor's appraiser; provided, that should the Lessee fail to notify Lessor in writing within 30 days after receipt thereof that Lessee

disagrees with the fair market rental as determined by Lessor's appraiser and that Lessee has appointed its own appraiser to prepare an independent appraisal report, then the fair market rental as determined by Lessor's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening. If Lessee has notified Lessor and appointed his appraiser as stated hereinabove, Lessee's appraiser shall complete his appraisal and the two appraisers shall then exchange their reports within forty-five (45) days from the date of Lessee's appointment of the appraiser.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. However, should differences still exist fourteen (14) days after the exchange, the two appraisers shall within seven (7) days thereafter appoint a third appraiser who shall also prepare an independent appraisal report based on the review of the two appraisal reports prepared and any other data. Copies thereof shall be furnished to the first two appraisers within forty-five (45) days of the appointment. Within twenty (20) days after receiving the third appraisal report, all three shall meet and determine the fair market rental in issue. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both Lessor and Lessee, subject to vacation, modification or correction in accordance with the provisions of Sections 658-8 and 658-9, Hawaii Revised Statutes. The Lessee shall pay for its own appraiser and the cost of the services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, or by the

foregoing prescribed time, whichever is later, 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 Lessee shall then be subject to retroactive adjustments as appropriate to reflect the fair market rental determined as set forth hereinabove. However, Lessee or Lessee's appraiser's failure to comply with the procedures set forth above shall constitute a waiver of Lessee's right to contest the new rent, and the Lessee shall pay the rent as determined by Lessor's appraiser without any retroactive adjustments. Alternatively, Lessor may treat such failure as a breach of this lease and terminate the lease.

D. The interest rate on any and all unpaid or delinquent rentals shall be at one per cent (1%) per month.

3. No assignment of the lease shall be permitted for a period of five (5) years from the effective date of any mortgage resulting from the extension granted herein.

4. The Lessee shall furnish the Lessor with an annual statement showing the profit or loss realized from farming activities conducted on the premises.

5. All plans and specifications covering improvements proposed for the subject area shall be submitted to the Chairman for approval prior to construction.

6. The proceeds of the loan shall be used as indicated in the application for extension which is on file with the Department of Land and Natural Resources.

7. All proposed improvements, grubbing, grading, etc., shall be completed within two (2) years from the effective date of the Western Farm Credit Bank mortgage loan resulting from the extension granted. The Lessee shall submit to the Department for review and approval two (2) sets of grading plans, building plans,

and appropriate permits and approvals from applicable State and County agencies prior to commencement of any work activity.

IN ADDITION TO THE ABOVE PROVISIONS, LESSEE AGREES TO THE FOLLOWING TERMS AND CONDITIONS:

8. Prohibition against discrimination. The Lessee covenants that the use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, sex, national origin or a physical handicap.

9. Reservations by the State. In addition to these reservations contained in the general lease, Lessor also reserves all geothermal resources and all prehistoric and historic remains found in, on or under the demised premises.

10. Improvements. That the Lessee shall not at any time during said term construct, place, maintain and install on said premises any building, structure or improvement of any kind and description whatsoever except with the prior approval of the Board and upon such conditions as the Board may impose, including any adjustment of rent, unless otherwise provided herein. The ownership thereof shall be in the Lessee until the expiration or termination pursuant to a breach of the lease, at which time the ownership thereof shall vest in the Lessor.

11. Assignments, etc. That the Lessee shall not transfer, assign or permit any other person to occupy or use the said premises or any portion thereof, or transfer or assign this lease or any interest therein, either voluntarily or by operation of law, except by way of devise, bequest or intestate succession, and any transfer or assignment so made shall be null and void; provided, that with the prior written approval of the Board the assignment and transfer of this lease or unit thereof may be made if (1) it contains the personal residence of the Lessee; (2) in the

case of commercial, industrial, hotel, resort, apartment and other business uses, the Lessee was required to put in substantial building improvements; (3) the Lessee becomes mentally or physically disabled; (4) extreme economic hardship is demonstrated to the satisfaction of the Lessor; or (5) it is to be corporate successor of the Lessee; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the Assignee and, if necessary, revise the rent of the demised premises based upon the consideration paid by the Assignee; and, provided, further, that the rent shall not be revised downward.

12. Indemnity. That the Lessee will indemnify, defend and hold the Lessor harmless from and against any claim or demand for loss, liability or damage, including claims for property damage, personal injury or death, arising out of any accident on the demised premises and sidewalks and roadways adjacent thereto or occasioned by any act or nuisance made or suffered on the premises, or by any fire thereon, or growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition, or by any act or omission of the Lessee, from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

13. Liability insurance. That the Lessee shall procure, at its own cost and expense, and maintain during the entire period of this lease, a policy or policies of comprehensive public liability insurance, in an amount of at least \$300,000.00, insuring the Lessor and Lessee against all claims for personal injury and/or death, and in an amount of at least \$100,000.00 for property

damage; that the policy or policies shall cover the entire premises; including all buildings, improvements and grounds and all roadways or sidewalks on or adjacent to the demised premises in the control or use of the Lessee. The Lessee shall furnish the Lessor with a certificate showing the policy to be initially in force and shall furnish a like certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel the policy prior to actual cancellation. The procuring of this policy shall not release or relieve the Lessee of its responsibility under this lease as set forth herein or limit the amount of its liability under this lease. The notice to cancel shall be sent to the Lessor sixty (60) days prior to the date of cancellation.

mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned Federal agencies.

15. Breach. That time is of the essence of this agreement and if the Lessee shall fail to pay such rent or any part thereof at the times and in the manner aforesaid within thirty (30) days after delivery by the Lessor of a written notice of such breach or default, or if the Lessee shall become bankrupt, or shall abandon the said premises, or if this lease and said premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of the Lessee's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and such failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of such breach or default, by personal service, registered mail or certified mail to the Lessee at its last known address and to each mortgagee or holder of record having a security

interest in the demised premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter such premises or any part thereof, and upon or without such entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the property of the Lessor; furthermore, Lessor shall retain all rent paid in advance as damages.

16. Right of holder of record of a security interest.

In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) days or any other default or breach within sixty (60) days, from the date of receipt of the notice hereinabove set forth, or within such additional period as the Lessor may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of said debt and mortgage from said holder or if ownership of such privilege, interest or estate shall have vested in such holder by way of foreclosure, or action in lieu thereof, the Lessor shall be entitled to the conveyance of said privilege, interest or estate upon payment to said holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with such foreclosure and preservation of its security interest, less appropriate credits, including income received from said privilege, interest, or estate

subsequent to such foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt thereby secured; provided that a reasonable delay by the Lessor in instituting or prosecuting any right or remedy it may have hereunder shall not operate as a waiver of the right or to deprive it of a remedy when it may still hope otherwise to resolve the problems created by the breach or default. The proceeds of any disposition effected hereunder shall be applied, first, to reimburse the Lessor for costs and expenses in connection with the disposition; second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon disposition which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

17. Surrender. That the Lessee shall, at the end of said term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the demised premises, together with all improvements existing or constructed thereon unless provided otherwise. Furthermore, upon the expiration, termination and/or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, the Board of Land and Natural Resources may remove any and all such personal property from the premises and place said property in storage at the cost and expense of Lessee, and the

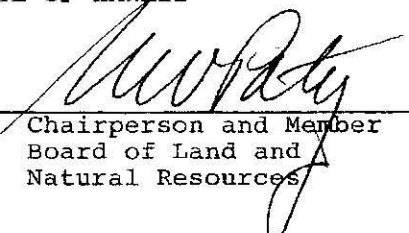
Lessee does hereby agree to pay all costs and expenses for removal and storage of such personal property.

Should there be any conflict between the terms of this Extension Agreement and the terms of the General Lease, this Extension Agreement shall control.

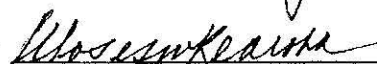
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date first above written.

STATE OF HAWAII

By


Chairperson and Member
Board of Land and
Natural Resources

And By


Member, Board of Land
and Natural Resources

LESSOR

S & S PLANTS, INC., a Hawaii
corporation

By


Its

By


its

LESSEE

APPROVED AS TO FORM:


Deputy Attorney General
Dated: September 14, 1988

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

On this 26th day of SEPTEMBER, 1988,
before me appeared STEVEN S. SAIKI and JEANNIE N.C. SAIKI, to me
personally known, who, being by me duly sworn, did say that they
are the PRESIDENT and SECRETARY,
respectively of S + S PLANTS INC, a Hawaii corporation,
and that the seal affixed to the foregoing instrument is the
corporate seal of said corporation and that said instrument was
signed and sealed in behalf of said corporation by authority of
its Board of Directors, and the said STEVEN S. SAIKI and
JEANNIE N.C. SAIKI acknowledged said instrument to be the free
act and deed of said corporation.

Betty G. Tanaka
Notary Public, State of Hawaii
My commission expires: July 15, 1990

CERTIFICATION

I hereby certify that the foregoing document
is a true and correct copy of the document
on file in the State Department of Land and
Natural Resources, Land Division at the
Kalanimoku Building, 1151 Punchbowl St.,
Rm. #220, Honolulu, Hawaii.

5.19.14

Date

[Signature]
Land Division Administrator