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January 8, 2025

Via Email (blnr.testimony@hawaii.gov)

Chairperson Dawn N. S. Chang
Board of Land and Natural Resources
State of Hawaii
1151 Punchbowl Street
Honolulu, Hawaii 96813

Re: Consent to Stock Transfer and Assignment of General Lease No. S-4946 and Revocable Permit No. S-7256. (Agenda Items Nos. 13 and 14)

Dear Chairperson Chang:

We represent Sunrise Capital, Inc. (“**Sunrise**”) with respect to the application identified above and are writing to the Board of Land and Natural Resources (“**Board**”) in connection with the upcoming Board Meeting to be held on January 10, 2025. As background to this application, allow us to explain that Sunrise entered into an Asset Purchase Agreement, dated effective as of July 11, 2024 (“**APA**”), with Aloun Kauai Farming LLC (“**Aloun**”), pursuant to which Sunrise agreed to sell and Aloun agreed to purchase Sunrise’s business of processing and selling farm-raised shrimp grown on the Island of Kauai, Hawaii through its “**Kauai Shrimp**” brand and operations (“**Kauai Shrimp Business**”). The sale of the Kauai Shrimp Business is a complex and multi-faceted transaction that involves all of Sunrise’s farm and aquaculture land, facilities, equipment, and inventory and for raising, farming, and sale of meat shrimp, including Sunrise’s intangible property and the good-will associated with the “**Kauai Shrimp**” brand – which is sold across the globe and is one of Hawaii’s few sustainable, local food production operations. While not a large financial transaction, the sale to Aloun provides Sunrise with a preferable alternative to simply shutting down the Kauai Shrimp Business, and is intended to allow for a continuation of the business under local ownership and as well as continued employment for over thirty local employees in the Kekaha area.

Pursuant to the APA in order for the transaction to close, the parties must obtain the necessary government approvals for the assignment or transfer of:

(1) Approximately 378.58 acres of land in Kekaha licensed from the Agribusiness Development Corporation (“**ADC**”) pursuant to License Agreement No. LI-K1001 dated July 21, 2009, as amended (“**ADC-License**”) and approximately 145.64 acres of land in Kekaha leased from the ADC pursuant to General Leases Nos. S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020 (“**ADC-Leases**”).

(2) Approximately 0.387 acres of land in Hanapepe leased from the State of Hawaii Department of Land and Natural Resources (“**DLNR**”) via General Lease No. S-4946 (“**GLS-4946**”) and approximately 0.825 acres of land issued to Sunrise by the DLNR via Revocable Permit No. S-7256 (“**RPS-7259**”).

The ADC has approved the assignment of the ADC-License and ADC-Leases in anticipation of the scheduled closing of the Kauai Shrimp Business conveyance to Aloun on January 31, 2025. At this point,

the Board's approval of the assignment of GLS-4946 and transfer of RPS-7259 is one of the last remaining items in order for this transaction to close. All appeared to be in place to allow for a transition of Kauai Shrimp Business to Aloun until the parties received the revised submittals to the Board for the upcoming meeting on January 10, 2025, which added two lease assignment premiums that appear inconsistent with the DLNR's position to date as well as the Board's prior approval. These proposed additional assessments jeopardize this transaction and the fate of the Kauai Shrimp Business. Allow us to explain.

The first proposed lease assignment premium is unconnected to the APA and instead involves an after-the-fact approval for an internal stock transfer of approximately 49% of Sunrise's ownership interests in July 1, 2020. This proposed lease premium is in the amount of \$82,515, and appears to have been calculated in a recent Appraisal Report dated December 3, 2024 ("**Appraisal Report**") by The Benavente Group LLC for the DLNR. The Appraisal Report calculated this premium amount on the basis that fair market value of the 49% fractional leasehold interest in GLS-4946 was equivalent to \$353,000 in July 2020. This premium is difficult to understand and concerning when you consider that three years earlier (in 2017), the other 51% of Sunrise's ownership interests were sold in a similar internal transaction, and the DLNR and the Board determined that no lease assignment premium was applicable as DLNR calculations showed a negative net consideration for GLS-4946 at -\$189,791.20.¹ In 2020, in the midst of the Covid-19 pandemic, when the remaining portion of the stock in Sunrise was internally transferred, it seems inexplicable that the value of GLS-4946 went up, much less increased to \$353,000.

The second proposed lease assignment premium is in connection with the APA and involves the proposed assignment of GLS-4946 to Aloun. The Appraisal Report calculated this premium amount on the basis that the fair market value of GLS-4946 was \$1,020,000 as of October 1, 2024. This figure is also concerning since the entire consideration for the APA and the sale of the Kauai Shrimp Business is only \$1,400,000. Indeed, Sunrise and Aloun did not initially consider or allocate positive consideration for GLS-4946 as part of the total consideration to be paid under the APA. This is because the GLS-4946 will expire (if not extended) in a few days, so if the transaction did not go forward, the lease would not be extended. But more importantly, in the event the Kauai Shrimp Business could be saved and transferred to Aloun, the GLS-4946 would be extended by the State and, in that case Aloun would be: (i) required to pay fair market rates for such a ground lease; and (ii) obligated to make improvements to the leasehold property in the amount of approximately \$242,915.00 by January 18, 2028. It is basically a new lease at market rates with a substantial obligation to improve the premises. Aloun is willing to extend the lease and commit to these market terms.

However, the imposition of these new proposed premium assessments in their stated amounts was never considered or even suggested by anyone, including those at DLNR, and jeopardizes a transaction that is critical to saving the Kauai Shrimp Business, maintaining over thirty jobs, and sustaining economic activity within the leasehold property and across Kauai.

While Sunrise strongly feels there is no appreciable value to the GLS-4946, which is a very small but integral component of the Kauai Shrimp Business, we would like to propose an alternative calculation of the premium assessments for the Board's consideration. For the 2020 transaction, we believe it is reasonable for the Board to find no lease assignment premium applicable as was done for the nearly identical transaction in 2017 that was approved and confirmed by the Board and relied upon by Sunrise. For the current transaction, we recommend that the entire consideration to be paid under the APA (\$1,400,000) be apportioned for all the subject lands to be transferred to Aloun, in connection with the

¹ A copy of the Board action of December 8, 2017, under agenda Item D-1, can be found here: <https://dlnr.hawaii.gov/wp-content/uploads/2017/12/D-1.pdf>

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Kauai Shrimp Business transaction, with the amount allocated to GLS-4946 and RPS-7259 and the new premium assessment as follows:

<u>Instrument</u>	<u>Acres</u>
ADC-License	378.58
ADC-Leases	145.64
GLS-4946	0.387
RPS-7259	0.825
Total Acres	525.432
Allocation of Consideration Per Acre	\$2,664.47
Allocation to GLS-4946 and RPS-7259	\$3,229.34

The language of Chapter 171-36(a)(5) of the Hawaii Revised Statutes, as amended, gives the Board broad discretion regarding whether to condition consent on the payment of a premium:


“provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee . . .” (emphasis added).

As the statute makes the assessment of a premium optional, the Board has the latitude to determine whether to assess such a premium and, if so in what amount. In this case, we hope that the Board will consider the above and the value to the state and community in promoting the sale of the Kauai Shrimp Business to Aloun. Sunrise believes that the Board can, by making this transaction possible, allow Aloun to support the employees of the Kauai Shrimp Business (realizing the long-term economic benefits these jobs provide to the local community), while also supporting the DLNR’s mission to enhance, protect, conserve and manage Hawaii’s unique and limited natural, cultural and historic resources held in public trust for current and future generations of the people of Hawaii, and its visitors, in partnership with others from the public and private sectors.

Thank you in advance for your and the Board’s consideration of Sunrise’s application and this request regarding the proposed premium assessments. As always, please do not hesitate to contact me with any questions or to discuss this request.

Sincerely,

LUNG ROSE VOSS & WAGNILD

By: 
Craig P. Wagnild
Attorney at Law, A Law Corporation
Its General Partner

CPW:

cc: Sunrise Capital, Inc.