

**TESTIMONY FOR THE SENATE COMMITTEE ON JUDICIARY AND  
GOVERNMENT OPERATIONS  
THURSDAY, MARCH 5, 2009, AT 10:15 A.M.  
ROOM 211, STATE CAPITOL**

**RE: S.B. 764, S.D. 1, Relating to Real Property**

Chair Taniguchi, Vice Chair Takamine, and Members of the Committee:

My name is Brad Leach, Vice President-Pacific Region, for Reit Management & Research LLC, the property manager for HRPT Properties Trust ("HRPT"). Through its affiliated companies, HRPT owns industrial zoned land in Mapunapuna, Sand Island, and Ewa, and leases many of its Hawaii properties pursuant to long-term leases.

HRPT respectfully, but strongly, opposes S.B. 764, S.D. 1 ("the Bill"). This Bill is unprecedented and unconstitutional. The Bill is targeted at a single landowner—HRPT—and would effectively change the agreed upon terms of previously negotiated long-term commercial and industrial lease contracts, for the sole benefit of a small group of lessees. The proponents of the Bill include some of the largest companies in Hawaii and wealthy sandwich lease investors, who have enjoyed substantially below-market lease rents for the last decade. These lessees generally have 50-year ground leases which have rent re-set every ten years. In testimony before the State Senate on this Bill, the Bill's proponents candidly admitted that they are pushing the Bill to use as leverage in lease rent renegotiations with HRPT, to use it (in the words of a State Senator) as a "club" against HRPT. HRPT respectfully submits that is not an appropriate use of the legislative process, and reinforces the conclusion that this Bill violates the Contracts Clause of the United States Constitution. HRPT urges the Bill be held in committee, for the following reasons:

**1. There is no public need for this legislation**— Since HRPT acquired the Mapunapuna properties in 2003, the type of rent re-set lease contract provisions targeted by the Bill have been triggered more than 50 times. HRPT and its tenants have successfully negotiated a mutually acceptable rent rate in more than 90 percent of these cases. When the lessor and lessee cannot agree, the existing lease contracts and existing law in Hawaii establish a procedure whereby the land's fair market value and resulting lease rent are determined by neutral, qualified appraisers. This fair market value appraisal procedure for determining commercial and industrial

lease rent rates has been followed here in Hawaii for many decades on all such leases. Resetting the rent at fair market value means the rent can increase or decrease.

In those few cases where the tenant and HRPT have not reached an agreement on new lease rent, HRPT has never declined a tenant's request for mediation which avoids the time and expense of arbitration otherwise required by the lease. The proponents of this Bill have stated that HRPT has made "take it or leave it" offers. That is simply false. HRPT is now negotiating with several tenants on rent re-negotiation and lease restructuring issues, where both parties have amicably exchanged offers. HRPT also has entered into dozens of new leases. Demand has remained strong for HRPT's properties, and HRPT has tried to balance that demand with the needs of its existing tenants.

HRPT is a long-term investor in Hawaii. HRPT's business plan is to work with existing tenants to offer extended lease terms and fixed-rent periods in return for rental adjustments to market rates. This approach enables more tenants to obtain bank financing to improve their buildings, because banks often will not make capital improvement loans to businesses when their lease terms are short. HRPT also is working with some tenants to make more efficient use of their property, sometimes by reducing the size of their rental lot and building taller or higher-ceiling warehouses. That way tenants can obtain a long-term lease where they pay less rent on a more functional warehouse, and at the same time free up additional industrial land for other companies who wish to move to the area.

Many of the proponents of the Bill are tenants whose lease rent was last re-set in the 1990s, when property values were far lower than they are today. Research data from Colliers Monroe Friedlander shows that industrial warehouse rents on Oahu have doubled between 1998 and 2008. Colliers' data also shows that estimated industrial land values in the Mapunapuna/Sand Island/Kalihi Kai area have doubled during the same period. Tenants who have had the benefit of a low, fixed rental rate for the last ten years will now have their rent re-set to reflect those increased values and current market rates. However, HRPT views each lease on its unique facts and circumstances, and has always carefully considered any reasonable tenant proposal.

2. **The Bill is unconstitutional**—While the Bill's proponents claim that this Bill merely "clarifies" HRPT's leases with its tenants, in fact the Bill seeks to re-define an existing term in existing leases. By the admission of the Bill's own proponents, in their

testimony before the State Senate, the Bill seeks to change the lease rent redetermination process in existing leases for the sole benefit of lessees, to attempt to reduce their lease rent.

The Hawaii Supreme Court has cited three criteria in analyzing whether a state statute violates the Contracts Clause of the U.S. Constitution: (1) whether the state law operates as a substantial impairment of a contractual relationship; (2) whether the state law was designed to promote a significant and legitimate public purpose; and (3) whether the state law was a reasonable and narrowly-drawn means of promoting the significant and legitimate public purpose. Application of Herrick, 82 Haw. 329, 340 (1996)

**a. The Bill substantially impairs a contractual relationship**

This Bill substantially impairs HRPT's contractual relationships with its lessees because, among other reasons:

-- The Bill materially affects the most essential term in a commercial and industrial lease: the lessee's obligation to pay rent.

-- The Bill regulates an area of commerce, commercial and industrial leasing, that was not previously regulated by the State. State and federal courts have repeatedly held that the lack of any prior regulation and government intervention is an important factor in determining whether a new law violates the Contracts Clause.

-- The Bill re-defines an existing term in an existing contract, and according to its proponents, would command appraisers, arbitrators, and courts to interpret the existing term under this new definition—contrary to how appraisers and arbitrators have interpreted that term for decades of the contract.

-- The preamble to the Bill and the abundant testimony of its proponents make clear that the intent of the Bill is to reduce the amount of rent lessees would be obligated to pay when their rents are re-set under the lease contract. In other words, the sole purpose of this Bill is to take an economic benefit from one contracting party, the lessor, and give that economic benefit to the other contracting party, the lessee.

In sum, there can be no dispute that a law which fundamentally changes the lease rent re-determination process, and which has the intent and effect of reducing lease rent paid under the lease contract, substantially impairs a contractual relationship.

**b. The Bill does not promote a significant public purpose**

In determining whether a state law promotes a significant and legitimate public purpose, the Hawaii Supreme Court has stated that the new law must “impose a generally applicable rule of conduct designed to advance broad societal interests.” Anthony v. Kualoa Ranch, 69 Haw. 112, 123 (1987). In Anthony, the Court held that a state law that simply tries to “do equity as the legislature saw it”, by changing contractual obligations for the benefit of lessees, is unconstitutional. Id.

This Bill does not “advance broad societal interests,” and is therefore unconstitutional under Anthony. HRPT is the only landowner in the State who holds leases affected by this Bill. This Bill is targeted at one, and only one, landowner, and would benefit a small but vocal group of lessees. Many of these lessees are wealthy sandwich lease investors. Their subtenants, often small local businesses, will not benefit from the Bill because subleases can be exempted. This is a private dispute between one landowner and a few lessees who apparently have differing views as to the current value of industrial land in or around Mapunapuna. In such a situation, Anthony requires that this private dispute be resolved according to the existing terms of the contract—not by a new law that seeks to rearrange contractual rights and obligations.

Furthermore, while the Bill speaks generally about fears that “this economic crisis will lead to more unemployment and business closures and financial failures,” there are no findings and no evidence whatsoever that reducing the rent for a small group of lessees of one landowner will resolve those problems. In fact, contrary to the claims of the Bill’s proponents, there have been no mass evictions, lease terminations, or business failures in Mapunapuna. Mapunapuna has always been and will remain a dynamic center for Oahu’s industrial and commercial businesses, both large and small.

**c. The Bill is not reasonably and narrowly drawn**

In 2002, the Legislature was considering a bill that, among other things, would have changed the way fair market value is calculated in commercial lease rent negotiations. The Senate Commerce & Consumer Protection Committee asked for an Attorney General’s opinion on the bill’s constitutionality. In an April 11, 2002 letter to the Senate, the Attorney General explained why the bill failed to provide a reasonably and narrowly drawn means to accomplish a significant and legitimate public purpose:

[A]lthough the problem of the oligopoly and residential leases in Hawaii is unique and found nowhere else in the United States, this problem does not apply to commercial leases. Most businesses lease their property rather than purchase them in fee simple. Furthermore, the businesses that can construct major improvements involving significant capital investments are generally run by managers with the knowledge and skill to negotiate terms of leases that are favorable. Those businesses with less investment in their property are more likely to be able to relocate. Furthermore, agreeing to a fixed rent even though land values may fluctuate is a business risk that businesses seeking a profit should take into consideration when negotiating a lease in the first place. In addition, the lessees have options available to them. They may continue to lease at the higher than market rent, sell their leasehold and move elsewhere, [or] negotiate a more favorable lease with another lessor because the fair market value of the land at this time is lower . . .

See Attorney General's April 11, 2002 Opinion Letter, p. 3.

The Attorney General's comments from 2002 apply equally to this Bill, seven years later. This Bill is unconstitutional; bad policy; and bad for business throughout the State of Hawaii. The Bill sets a terrible precedent, sending a message to all businesses that they cannot necessarily rely on enforcing mutually agreed contract terms in this State. I ask that the Committee hold this Bill, and I thank the Committee for the opportunity to express our opposition.

March 3, 2009

Sen. Brian Taniguchi, Chair  
Sen. David Ige, Vice-Chair  
Senate Committee on Judiciary

RE: TESTIMONY IN SUPPORT OF SB 764 SD1 RE REAL PROPERTY  
Hearing: Thursday, March 5, 2009, 10:15 a.m. Conf Rm #211

Chair Taniguchi, Vice Chair Ige and Members of the Committee:

My name is Robert Creps and I the Senior Vice President of Administration for Grace Pacific Corporation. Grace Pacific holds a ground lease for 78,000 square feet at 110 Puuhale Road, just off of Sand Island Access Road. HPRT Properties Trust (HRPT) is Grace's lessor.

In the February 26th Judiciary committee hearing of companion bill HB 1593, the committee had asked about a quote from HRPT's September 29, 2008 2nd Quarter Earnings Call, which gave insights into how HRPT views Hawaii, Hawaii's economy and how business is done in Hawaii. The officer representing HRPT at the hearing was unable to identify or confirm the quote as being correctly attributed to his company.

I am enclosing the following quote from the February 26, 2009 4th Quarter Earnings Call of HPRT, which not only confirms the statement attributed to the September 29th Earnings Call, but also demonstrates HRPT's continuing insensitivity to the future of Hawaii's people:

Adam D. Portnoy - Managing Trustee

" The question about when is NOI going to start being increases in NOI. We have an interesting situation in Oahu. We bought properties at a value of may be about 45 bucks a square foot and they have clearly gone up in value may be over \$100 a square foot if not more in value that they have increased; probably more and more in some instances. And Hawaii is an interesting place, we've actually had... we have built in I think 50% or 70% roll-ups in the rents, just where they are currently paying us versus what the market is.

If investors have ever been worried that HRP is not aggressive in trying to maximize cash flow, I suggest you just read some of the press reports that come out of Hawaii because there is a group of tenants that have banded together and are now trying to lobby the state legislature to do some pretty remarkable and amazing things that I think frankly might be unconstitutional.

But which are... that they are trying to prohibit our ability to raise the rents for those tenants. And that is something why that sort of conversations are going on at the state government level among a group of tenants that we space to and lend to is basically putting all the leasing activity on hold in that space in that land... in Hawaii, because everyone wants to see what's going to happen? What's the state legislature going to do? Are they actually going to pass some sort of crazy bill, that says that you can't raise rents commercial... you go in and actually alter agreed contract between two parties by state law, by state act and that's why I think it might be... I believe it is unconstitutional.

So with that what I'm trying to tell you is that we're working very hard but we have people that are working very hard on the other side trying to prevent us from raising the rents. And as a result of all this I think it might be, it might take till the end of the year that we start to increases in cash flow come out of that portfolio. I think the next three to six months we're into a little bit of fight. It's what's going on. "

**For a copy of the original transcript please visit website [www.SeekingAlpha.com](http://www.SeekingAlpha.com).**



# SERVCO PACIFIC INC.

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

March 4, 2009

To: The Honorable Brian T. Taniguchi  
and Committee Members  
Committee on Judiciary and Government Operations

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

Hearing Date: Thursday, March 5, 2009, 10:15 a.m.

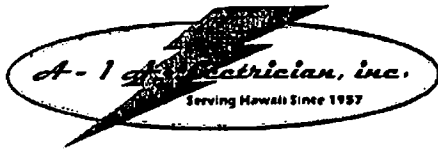
In Support of SB 764 SD 1, Relating To Real Property

On behalf of Servco Pacific Inc. ("*Servco*"), I submit the following comments in support of the adoption of SB No. 764 SD1 (the "*Bill*").

This bill affects businesses and lessees in the Mapunapuna, Sand Island, and Kalihi Kai areas who are trying to negotiate with landowner, HRPT, a Boston-based real estate investment firm. Servco is a third generation local company that has long-term commercial and industrial ground leases with HRPT in Mapunapuna. Our ground leases specifically provide that "said rent shall be such fair and reasonable annual rent for the demised land". We and other similarly affected lessees are asking that you support us by adopting this bill which calls for our ground lease rents to be negotiated on terms that are "fair and reasonable" to BOTH the landowner and lessees. HRPT is demanding rents that are double or triple what their lessees are now paying. They are also requiring a rent escalator of 3% to 4% that compounds annually. These rent offers are not "fair and reasonable" and our local companies simply cannot afford these rents.

This bill will not cost the State anything. But without it, the State may lose additional revenues if companies are forced to shut down and more jobs are lost due to exorbitant ground lease rents that are not fair and reasonable given the difficult economy and challenges that we face today. With your support of this bill, you will be supporting our local companies, their workers, and the customers we serve throughout the State.

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



2849 Kaihikapu Street • Honolulu, Hawaii 96819

Phone (808) 839-2771 • Fax (808) 833-3536

March 3, 2009

Committee on Judiciary and Government Operations  
Senator Brian T. Taniguchi, Chair  
Senator Dwight Y. Takamine, Vice Chair

Re: SB 764 Relating to Real Property  
Date: Thursday, March 5, 2009  
Time: 10:15 am  
Place: Conference Room 211  
State Capitol  
415 So. Beretania St.

Aloha Chair, Vice Chair and Members of the Committee:

My names is James Yamada, Jr., and I am a lessee in Mapunapuna under an original lease with Damon Estate dated 1971.

I own and operate the electrical contracting firm A-1 A-Lectrician, which my father James Yamada, Sr. built from the ground up in 1979. We have now grown to become one of the largest electrical contracting firms in the state, with nearly 150 office employees and electricians. I built and own my 5,000 square foot office space, and will be adding on a 2,000 square foot office extension, with building to commence in April 2009. Currently, we have a mortgage with First Hawaiian Bank with a balance due to date of \$150,000.00.

My lease is scheduled for rent renegotiations in 2012 with HRPT. With the economy in such a dismal position, I am very concerned about the potential rent increases set to take place in 2012.

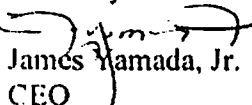
Last year, due to unforeseen economic circumstances, we were forced to lay off 60 to 70 of our employees, including one employee who has been with our company since 1990. Without a determination of what exactly "fair and reasonable" means, we could see our rent nearly double, which could effectively force us to again make cuts to our workforce and/or cuts to pay.

Due to the harsh economy, other electrical contracting firms have lowered their labor costs to remain competitive. If rent costs are raised, we would be forced to increase our labor costs, which would threaten our chances of being awarded job contracts, and thus we would again be forced to make cuts to our workforce.

This Bill provides that the rent increase shall be "fair and reasonable" to both lessor and lessee and that the determination of the increase will depend on actual factors affecting or relating to my property. Fair and reasonable rent will allow me to continue to operate my business, remain competitive in the industry and keep my employees working.

With utmost regard for the sake of our employees and their families, I ask that you pass this Bill.

Sincerely,

  
James Yamada, Jr.  
CEO





# PLYWOOD HAWAII

1062 Kikowaena Place  
Phone (808) 834-1144

Honolulu, Hawaii 96819  
Fax (808) 834-1232

TO: Committee on Judiciary and Government Operations  
Senator Brian T. Taniguchi, Chair  
Senator Dwight Y. Takamine, Vice Chair

Date Thursday, March 5, 2009, 10:15a.m.  
Conference Room 211

Re: **Testimony in Support of SB764, Relating to Real Property**

Aloha Chair, Vice Chair, and Members of the Committee,

My name is Connie Smales and my husband and I are owners of Plywood Hawaii, Inc., a wholesale plywood and lumber distributor serving the construction industry. Our company has been in business since 1995 and we employ 12 people. I am writing in support of SB764.

This bill will **clarify** the language in our present leases and allow us to participate in a determination of our ground rent in a manner that is fair to both sides. It will highlight the special provisions that are contained in the HRPT leases (formerly Damon Estate) whose only reference regarding the determination of rents is to require that they be "fair and reasonable". This of course is presumed to be fair to both lessor and lessee.

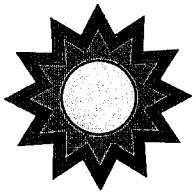
We are seriously concerned about the recent efforts of HRPT to dramatically increase our cost of doing business by doubling or tripling the rent in Mapunapuna, Sand Island and Kalihi Kai areas. HRPT is also attempting to change the leases, which are subject to periodic rent renegotiation by adding an annual step-up of 3 to 4 % in addition to the increase, and despite the dramatic downturn in the economy.

In requesting such dramatic increases, HRPT, the largest industrial landholder in the State of Hawaii, is attempting to generate unreasonable rents and therefore puts in jeopardy the small and medium sized business of this area that are the lifeblood of the State's economy. Should we find that as a last resort, arbitration is our only recourse, clarifying the unique provision for "fair and reasonable rents" would clarify the term for the arbitration panel.

As a small business owner, I share the concerns of other businesses in this area that we receive a fair interpretation of the provisions in our lease. Your passage of this legislation would provide an equal playing field for both lessor and lessee as we face renegotiation of our lease. The ability to pay a fair rent means that we can continue in business as well as continuing to employ the wonderful people who work for our company.

Sincerely,

Connie Smales, President



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Committee on Judiciary and Government Operations

March 5, 10:15 AM, Conference Room 211

In SUPPORT of SB 764, SD1 Re Real Property

Chair Taniguchi, Vice Chair Takamine and Members of the Committee.

My name is Cully Judd, I have owned and operated Inter-Island Solar Supply since 1975. We are a renewable energy wholesale distribution company contributing to the growing green collar industry in Hawaii. We have been at our Oahu branch location, 761 Ahua Street, for nearly ten years and would like to stay. Although we have four years till rent renegotiations, the veil of secrecy created by HRPT's non-disclosure agreements and overly aggressive rent increase suggestions have resulted in our decision to join the efforts of Citizens for Fair Valuation to ensure businesses like ourselves continue to have a home in the industrial area of Mapunapuna.

I ask for your support of House Bill 1593 as well as Senate Bill 764 which simply seek to establish the application of "Fair and Reasonable" rent to both the lessor and the lessee through transparent negotiations.

Mahalo for your consideration,

Lawrence McCully Judd

# **CITIZENS FOR FAIR VALUATION**

**841 Bishop Street, Suite 1500  
Honolulu, HI 96813**

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

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

March 3, 2009

## **COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS**

**Senator Brian T. Taniguchi, Chair**

**Senator Dwight Y. Takamine, Vice Chair**

### **Testimony in Support of SB 764**

**DATE: Thursday, March 05, 2009**

**TIME: 10:15 a.m.**

**PLACE: Conference Room 211**

Aloha Chair Taniguchi, Vice Chair Takamine, and Members of the Committee:

My name is Michael Steiner and I am the Executive Director of Citizens for Fair Valuation ("CFV"), a non-profit coalition of businesses with long-term ground leases in the Mapunapuna, Kalihi Kai and Sand Island areas. A partial list of lessees is attached to this testimony. These are the old Damon Estate lands which were purchased in 2003 by HRPT; a mainland based Real Estate Investment Trust (REIT). These ground leases, which typically last for 50 years, call for the renegotiation of rents that are "fair and reasonable," every 10 years.

### **Need for Legislation to Protect Local Businesses**

Senate Bill 764 seeks to establish that "Fair and Reasonable" rents should be applicable to both the lessor and the lessee. Unlike other ground leases in Hawaii which call for rent to be calculated upon land value at a certain rate of return, the HRPT leases call for "fair and reasonable" rents. CFV supports this Bill as it seeks to set parameters that will encourage open and transparent negotiations resulting in ground lease rental rates that are "fair and reasonable" to both parties and would not simply favor HRPT, who is now the largest industrial and commercial landowner in the State.

To be "fair and reasonable," rents should take into account the original agreed upon use and stewardship of the land. It is not "fair and reasonable" to increase rents based upon a single fee simple sale of land in the middle of captive space. At a minimum, to be "fair and reasonable" HRPT needs to take into consideration the agreed upon use of the land under lease, other newly signed ground leases for similar properties, the rates currently in force for neighboring properties, the general condition of the neighborhood, and the overall condition of the economy.

A landlord and tenant need to work together to provide stability and ensure that both parties benefit from the relationship. However, when asked how Hawaii rents will impact HRPT's profit, Adam D. Portnoy, Managing Director of HRPT, said during HRPT's 2<sup>nd</sup> Quarter Earnings Call on August 5, 2008:

"We are pushing rates very hard especially in places like Hawaii ... we've gotten a lot of flack in that market because we're pushing rates so hard ... So rest assured that we're doing everything we can, as much as we can and as fast as we can to try to increase the rates there to push cash flow to HRPT."

**Testimony in Support of SB 764.**

To accomplish this goal, HRPT is demanding base rents that are double or triple existing rates plus a 3.5% to 4.5% annual escalation. In addition, HRPT is requiring its lessees to sign confidentiality agreements ***before*** negotiations will commence – which is something the Damon Estate never required.

CFV is requesting that the State pass SB 764 to provide the public a foundation upon which open and transparent negotiations will lead to rents that are “fair and reasonable” to both sides.

**Not a Private Dispute**

The situation with these leases is not a private dispute between a group of lessees and one lessor. HRPT is a monopolistic owner and, especially in light of the current recession in Hawaii where every day brings news of more lay-offs and downsizing, tenants need the assistance of the legislative body to set parameters in which ground lease rents are negotiated in an open and transparent manner to provide “fair and reasonable” rents.

The issue is the continued economic viability of the Mapunapuna/Kalihi Kai/Sand Island industrial properties, the businesses that are located there and the continued employment of the hundreds, if not, thousands, of employees who work there. Moreover, this bill addresses a state-wide concern as the lessees in the Mapunapuna area provide goods and services across the entire State of Hawaii. Among the lessees’ businesses are Grace Pacific, Servco, Sony, Coca Cola, Ameron, Olelo Television, Bacon Universal and Inter-Island Solar Supply, all of which have multi-island responsibilities. In addition, there are numerous small and medium-sized companies that include electrical and plumbing supply houses that service contractors all over the state, general and sub-contractors who have jobs throughout the state and many others who provide goods and services to consumers and businesses on every island within the State.

Accordingly, significant increases in operating expenses will clearly impact the economy of the State of Hawaii. What happens to the Mapunapuna lessees is and should be a state-wide concern for legislators in this economy. This Bill recognizes that landlords and tenants, owners and lessees, need to come together to negotiate, in an open and transparent manner, to achieve rents that are “fair and reasonable” to all parties in order to preserve the businesses that provide for our way of life.

**HRPT Violating Contract Language**

Many contracts include definitions to assist the parties in performing their obligations under a contract; however, the former Damon Estate leases that contain the “fair and reasonable” provision do not.

The pending bills would establish parameters to ensure that rent adjustments under these particular leases be fair to both the lessor and the lessees. The bill does not add any new terms or delete existing terms from the lease or change any words in the lease. As such, the Hawaii Supreme Court case of Anthony v. Kualoa Ranch, Inc. 69 Haw. 112 (1987), is not applicable as SB 764 does not seek to “operate as a substantial impairment of a contractual relationship.” SB 764 is written such that it supports the 2002 Attorney General’s opinion that a Bill should “provide a reasonable and narrowly drawn means to accomplish a significant and legitimate public purpose.”

The Damon leases call for a rent renegotiation every 10 years and that, “said rent shall be such fair and reasonable annual rent for the demised land (exclusive of buildings)” for that period. It is HRPT that is changing the contract language by insisting that renewals include annual escalations, confidentiality agreements, a right of first refusal and more... In this time of economic uncertainty, this is not in the public’s best interest as these steep rental increases will result in higher consumer costs, more unemployment, possible business failures and ultimately, a lowering of revenue for the State of Hawaii.

**Testimony in Support of SB 764,**

**HRPT Intimidation Conduct**

Most ground leases in the Mapunapuna area have a term of 50 years. As mentioned, Damon would work with its tenants during tough times to ensure the viability of the businesses and protect its long-term relationship. Lessees have relied upon this conduct for the past 30 years.

With the sale of the property to the mainland-based HRPT, the old ways have been discarded. Instead of “fair and reasonable” negotiations, HRPT is demanding confidentiality agreements and mediation rather than simple open and transparent negotiation. No longer can neighbors meet to “talk story” without the fear of repercussion or law suit. Instead of setting a level rate for each new segment of the lease, HRPT is only offering rents with annual increases that range between 3.5% and 4.5%. In addition, HRPT is requiring the lessees to grant HRPT a right of first refusal to the lease in all re-openings.

These changes are not consistent with the “course of conduct” that was established over the years with Damon Estate. These changes are material and go beyond what would be considered “fair and reasonable” to both parties. They serve only to benefit the land owner and to reaffirm Portnoy’s statement, “... you’re going to see over the next 18-24 months [HRPT] continue to try to push rates as much as we can.”

**Negotiating under Duress**

To state the obvious, ground leases are for just the ground. It is the lessees’ responsibility to construct and maintain their buildings, which will revert to the land owner at the end of lease. In addition to the goodwill built up over years of occupying the same location, the lessees’ buildings represent a huge investment. Moving to another location is not an option as the lessee is bound to pay rent to the lessor whether they occupy the land or not. Without parameters to ensure that “fair and reasonable” rents will apply to both parties, the mainland owner can use its power to its advantage to create and demand rents that are not fairly negotiated. In essence, they are using their monopolistic power to economically evict tenants.

**Arbitration Does Not Work**

Should the owner and lessee fail to reach agreement, the lease requires the parties to enter arbitration. However, arbitration is not a viable method to determine the rent valuation.

Because the lessor has required the lessee to sign confidentiality agreements in advance of negotiations, and that agreement prohibits lessees from disclosing any terms offered or accepted, HRPT has made it impossible for the lessees to obtain meaningful information regarding the results of any other lessees’ negotiations – which could be argued to be the best comparable information. HRPT, on the other hand, is working with “inside information” as it has data for all current rents, pending negotiations, signed leases, and mediated or arbitrated outcomes.

HRPT holdings include more than 150 ground leases. With HRPT’s announced course of “pushing rents” as high as possible, the number of arbitrations will increase. Unfortunately, Hawaii’s pool of qualified appraisers is small and many may look to HRPT as a steady and lucrative source of business. The potential to sway the process to the land owner’s benefit will increase and the individual lessee, who has no access to “fair and reasonable” data, be at a distinct disadvantage. SB 764 will help set parameters to enable a fair and reasonable outcome to a negotiation, mediation and/or arbitration.

Arbitration is a lengthy and costly process that puts an extreme burden on the lessee. In these hard times, business owners are working frantically to maintain their existence and keep their employees employed. It is not within their budget projections to be forced to spend thousands of dollars to fight with the lessor – who truly should be a business associate and not an adversary.

### **Failure to Respond to Community Needs**

HRPT is an extremely large Real Estate Investment Trust (REIT) that must return at least 90% of its profits to its Stakeholders in order to maintain its preferred tax status. Most of its holdings are commercial high-rise office buildings located on the mainland and not long-term ground leases. HRPT is not accustomed to doing business here and, in the opinion of the writer, cares little for the "Aloha" that comes with the responsibility of owning Hawaiian land.

HRPT has stated that it has spent \$750,000 studying the tidal flooding its Mapunapuna land and has given the state a recommendation to cure the problem – it has not offered to tackle the problem or pay for it even though HRPT will ultimately receive the largest benefit. In contrast, back in 1999 Damon paid \$6,000,000 to provide new sewers and cesspools to its lessees.

Citizens for Fair Valuation ("CFV"), a non-profit coalition of businesses that lease land from HRPT, has sent seven (7) separate invitations to HRPT offering to meet to discuss how we can mutually obtain "fair and reasonable" rents for everyone concerned; however and to-date, each offer was rejected by HRPT. HRPT has done everything possible to intimidate its lessees and has taken aggressive steps to "divide and conquer" its tenants by forcing them to operate under a veil of secrecy.

### **Conclusion: Help Us Save Our Jobs**

As a final comment in support of this legislation, the lessees with HRPT leases are hard working business people who would rather conduct their business, which is getting harder to do each day, than campaign for new legislation. They do not object to paying rent that is fairly negotiated and determined by applicable economic and market factors including, but not limited to, applicable comparables, the current use of the property and the characteristics of neighborhood (i.e. daily flooding, poor streets, stream flooding, crime, construction, etc). They do, however, strongly object to a lessor who uses "take-it-or leave-it" tactics while insisting upon rents that range from \$8.00 to \$10.00 per sq. ft., with annual increases set between 3.5% and 4.5 %. As a comparison, the Jackson Auto dealership on Nimitz Highway, is listed at \$6.24 per sq. ft. for the land and improvements (buildings) and does not have the infrastructure problems that the Mapunapuna lessees have to live with on a daily basis. Hawaiian Homelands has two parcels in Shafter Flats for lease at \$5.36 but neither has attracted any takers other than the existing tenant.

In these hard times, small businesses need assistance. The state simply cannot afford to see more closures and the loss of employment. In particular, the businesses in the Mapunapuna, Kalihi Kai and Sand Island area represent a foundation upon which these islands were built. These are proud people who are not looking for a bail-out; they just want the comfort of knowing that both parties in these lease renegotiations will act in an open and transparent manner that will produce "fair and reasonable" rents for all concerned.

Thank you.

Michael Steiner  
Executive Director  
Citizens for Fair Valuation  
Telephone: (808) 221-5955  
Email: [MSteiner@SteinerAssoc.com](mailto:MSteiner@SteinerAssoc.com)

**ESTATE OF SAMUEL MILLS DAMON**

April 11, 1997

Dear Trustees:

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

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

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

April 11, 1997  
Page 2

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

The options being made available by the Trustees follow:

**Option 1:**

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

**Option 2:**

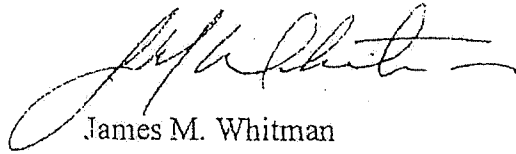
3 years @ \$2.95 per sq. ft. per annum (1/1/97 - 12/31/99)  
3 years @ \$3.15 per sq. ft. per annum (1/1/00 - 12/31/02)  
5 years @ \$3.45 per sq. ft. per annum (1/1/03 - 12/31/07)  
5 years @ \$3.95 per sq. ft. per annum (1/1/08 - 12/31/12)  
Waiver of \$2.00 in deferred rent (1/1/96 - 12/31/98)

	<u>mo</u>	<u>annual</u>
3 years @ \$2.95 per sq. ft. per annum (1/1/97 - 12/31/99)	\$ 8,775	105,309
3 years @ \$3.15 per sq. ft. per annum (1/1/00 - 12/31/02)	9,371	112,449
5 years @ \$3.45 per sq. ft. per annum (1/1/03 - 12/31/07)	10,263	123,158
5 years @ \$3.95 per sq. ft. per annum (1/1/08 - 12/31/12)	11,757	141,007

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

Very truly yours,

ESTATE OF SAMUEL MILLS DAMON



James M. Whitman  
Executive Secretary

Option No. 2, Accepted this  
8 day of May 1997.

1  
Lessee



# ESTATE OF SAMUEL MILLS DAMON

## MEMORANDUM

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

From: James M. Whitman  
Chief Operating Officer

Date: October 19, 1999

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

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

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

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

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

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

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

Addendum to Testimony from Michael Steiner  
In Support of HB 1593

Hearing Date: February 26, 2009, 2:15 p.m., Room # 325

Partial List of Lessees in the Mapunapuna/Kalihi-Kai/Sand Island Area

	Company
1	179 Sand Island Warehouse, LLC
2	Affordable Casket Outlet
3	A S N Enterprises
4	A-1-A Electricians
5	Ahua Enterprises
6	Al Castillo
7	Albert Young
8	Allied Building Products Corp.
9	All Nations Fellowship
10	Allwaste of Hawaii LTD
11	Aloha Auto Auction
12	Aloha Products
13	American Electrical Co., LLC
14	American Savings Bank
15	American Tire (Hawaiian Island Tire)
16	Ameron Hawaii
17	Anches, Jerome
18	Associated Construction
19	AT&T Wireless
20	Bacon - Universal Company, Inc.
21	Bank of Hawaii
22	Ben Franklin
23	Beth Israel Jewish Ministries Int'l
24	Big Rock
25	Blackbern & Associates
26	BOC Group, Inc.
27	Boise Cascade Corp
28	Bond, Jan Tr
29	Boulware, Michael H
30	C & F Machinery Corp
31	Carmen, Wade & Paula
32	Chevron USA Inc
33	Coca-Cola
34	Concrete Coring Co of Hawaii
35	Cossette Investments
36	Deer, Donald G 1989 REV TR/ETAL
37	Dennis Sullivan
38	Dimauro, Pender, leona
39	Diversified Energy Services
40	First Hawaiian Bank
41	Foster Equipment Co., Ltd.
42	Gentre Properties
43	Grace Pacific Corporation
44	Grapac Properties
45	Gray, James, TRS
46	GSH&K Investment
47	H Q INC
48	Hart, Doris J TR
49	Hawaii Concrete Product, Inc
50	Hawaii Nut & Bolt, Inc

	Company
51	Hawaii Stage & Lighting
52	Hawaiian Bitumuls Paving
53	HIE Holdings Inc
54	Hirahara, Ronald Y TR
55	Honolulu Disposal Service
56	Honolulu Painting Co
57	Honolulu Warehouse Co Ltd
58	Horizon Waste Services
59	HSI Electric, Inc.
60	Hydro-Scape Irrigation Supply
61	I DOI Hauling Contr, Inc.
62	Intech, Inc.
63	Inter-Island Solar Supply
64	Island Lighting
65	Ito-En (USA) Inc.
66	Jack Endo Electric
67	John Wagner Assoc Inc
68	Kahai St Dev Partnership
69	Kaiser Foundations Helath Plan
70	Kaya, Darlynne
71	Ken Yee
72	Ken's Auto Fender Ltd
73	Kilgo, A TR
74	Killebrew, George III Fam Tr
75	Kimi, William J Jr.
76	Kobatake, Gilbert D. Tr
77	Komohana Corp
78	Langer Hawaii Corp
79	Leeward Auto Wreckers Inc
80	Luria, Mark T.
81	M.C. Auto Body& Paint
82	Marcus & Associates Inc.
83	McKillican American
84	MHI LLC
85	Mid Pac Petroleum, LLC
86	Moanalua Exchange Ltd
87	Moanalua Mortuary
88	Monier Inc
89	Moos Machine Works, Inc
90	Mr. Sandman Inc.
91	MW Group Ltd.
92	Nakasone, Lillian KG
93	Nordic Construction Ltd
94	Oahu Metal & Supply Inc.
95	Okuhara Foods Inc
96	Olelo Community Television
97	Pacific Allied Products Ltd
98	Pacific Jobbers Warehouse
99	Pacific Machinery
100	Pflueger Group LLC

	Company
101	Philip Services Hawaii Ltd
102	Pioneer Electric Inc
103	Plywood Hawaii, Inc.
104	Pohounui Partners LLC
105	Polynesian Adventure Tours
106	Prime Construction Inc.
107	R & H Machinery Inc.
108	R WO & Associates Inc.
109	Ralph S. Inouye Co., Ltd.
110	Rasko Supply
111	Refuse Inc
112	Renfro, Charles & Carol S
113	Royal Construction Co. Ltd
114	RSI Roofing & Building Supply
115	S I Center Partners
116	Sawdust
117	Sears Roebuck & Co
118	Servco Pacific, Inc.
119	SLSS Partners
120	Snyder, Family Tr
121	Sony Electronics, Inc.
122	Specialty Surfacing Co.
123	STI Industries
124	Stoneridge Recoveries LLC
125	Sugai, Rodney Y Trust
126	Sin Industries Inc.
127	Sylvia, Robert C. Tr
128	Tagupa, James Tr
129	Takane, Janlu M
130	Takiguchi, Raymond K Tr
131	Tesoro Hawaii Corporation
132	Time Warner Entertainment
133	Tokunaga Masonry
134	Tri-Palm Industries Inc.
135	Tropical Ethanol Prod Ltd
136	Twentieth Century Furn Inc.
137	United Truck Rentals
138	UTR Liquidation * Repos Inc
139	Value Service & Supply
140	W T Yoshimoto Corp
141	Walker-Moody Construction
142	Wallner, Family Trust
143	Warehouse Rentals Inc.
144	WASA Electrical Service
145	Webco Hawaii, Inc.
146	Weggeland, Francis M
147	WESCO Distribution Inc.
148	White Cap Construction Supplu
149	Won, Philip W.
150	World Carpets Inc

**BENDET, FIDELL, SAKAI & LEE**

EDWARD R. BENDET  
JAY M. FIDELL  
WESLEY H. SAKAI, JR.  
DENIS LEE  
YURIKO J. SUGIMURA  
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OF COUNSEL  
KEITH S. AGENGA

\*Also licensed in California

March 2, 2009

Sen. Brian Taniguchi, Chair  
Sen. David Ige, Vice-Chair  
Senate Committee on Judiciary

RE: TESTIMONY IN SUPPORT OF SB764 SD1 RE REAL PROPERTY  
Hearing: Thursday, March 5, 2009, 10:50 a.m. Conf. Rm. #325

Chair Taniguchi, Vice-Chair Ige and Members of the Committee:

This firm is general counsel to Citizens for Fair Valuation ("CFV").

SB Bill 764 SD1 is intended to level the playing field between the industrial lessees at Mapunpuna/Sand Island/Kalihi Kai (former Damon Estate lessees) and their new landlord HRPT, a mainland real estate investment trust that bought the land from Damon Estate in 2003. The lessees are involved in rent renegotiations under their 50-year ground leases and the new landlord is trying to change the way those negotiations occurred for some 30 years while the Estate was the landlord.

Some of those changes include take-it-or leave-it offers that do not allow the lessees to negotiate and confidentiality agreements that condition the landlord's willingness to mediate or arbitrate the rent adjustment on the lessee's agreement not to disclose information (comparables) to other lessees (i.e., relevant comparables are only available to the landlord and not to the lessees, which was not the way it was done while the Estate was the landlord).

Appraisal literature provides that "market value" is composed of the aggregate of market transactions involving the actions of multiple buyers and multiple sellers and also includes the concept of "both parties being fully informed". "market rent" is composed of the aggregate of market lease transactions involving the actions of multiple lessors and multiple lessees . . . . also fully informed. HRPT's confidentiality requirement is inconsistent with the concept of a "market" and steps need to be taken to remove that impediment as it affects these lease negotiations.

In order to fully implement the transparency requirement that is currently being denied to CFV members by HRPT, we suggest a minor amendment to the bill to read as follows (i.e., new subsection "(2)" which is underscored and bolded):

**"§519- Leases of commercial and industrial property.**

[a] Notwithstanding any other law to the contrary and unless expressly stated to the contrary in the lease, any lease of commercial or industrial leasehold property shall be subject to the following terms and conditions:

(1) Whenever a lease existing on July 1, 2009, or entered into thereafter, provides for the renegotiation of rent during the term of the lease and the renegotiated rent is based, according to the terms of the lease, on fair and reasonable annual rent as of the commencement of the term, that provision shall:

(A) Be construed to require that the rent shall be fair and reasonable to both the lessor and the lessee to the lease; and

[B] Take into account the uses and intensity of use approved by the lessor, and the surface and subsurface characteristics of the site and the neighborhood on the renegotiation date; ~~and~~

**(2) It is unlawful to prohibit a lessee under any lease described in Section 519(a)(1) from obtaining, disclosing and sharing with other lessees information relating to rental negotiations in their neighborhoods.**

~~(2)~~**[3]** Unless otherwise specified in the lease, if the lessee has subtenants with subleases that provide for recovery by the lessee of ground lease rent, those subtenants shall be charged their pro-rata share of the fair and reasonable annual rent as renegotiated pursuant to this paragraph."

SB 764 SD1 Re Real Property  
Senate Judiciary Committee  
March 2, 2009  
Page 3

Thank you for allowing me to testify on this bill.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay M. Fidell". The signature is written in a cursive style with a large initial "J" and "F".

Jay M. Fidell  
OF BENEDET, FIDELL, SAKAI & LEE

JMF:ys

March 5, 2009

Senator Brian T. Taniguchi, Chair  
Senator Dwight Y. Takamine, Vice-Chair  
Senate Committee on Judiciary and Government Operations  
State Capitol  
Honolulu, Hawaii 96813

Re: SB 764 Re Real Property  
Hearing Date: March 5, 2009, 10:15pm, Room#211

Dear Senator Taniguchi, Senator Takamine, and Members of the Committee:

My name is Jason Ideta. I vote in the Kaneohe District and I am a lessee in the Mapunapuna area. My company is a small locally owned wholesale business that distributes auto parts directly to mechanics and other auto parts distributors on Oahu and the outer islands. We own an 18,000 square foot warehouse on 35,000 square foot property with a ground lease originally from the Damon Estate. We have 40 full-time and 2 part-time employees who have worked very hard to build the business over the last 23 years.

In front of the House Committee on Economic Revitalization, Business & Military Affairs, HRPT's lawyer stated to the committee that the Department of Hawaiian Homelands had a ground lease available for \$8 per square foot. That statement was more than disingenuous. It was a deliberate lie to the committee. I spoke with the person who handles DHHL commercial leases and the person who won the bid. Lease rates on those properties were determined by a bidding situation. The minimum opening bid was \$5.36 for 25 years, with no increases for the first 10 years. Only two of the current tenants showed up with just one taking the minimum. The other tenant did not bid at all.

When traditional lease contracts include a formula to calculate rents based on land value, the end result could favor the lessor or the lessee depending on the prevailing market conditions. I believe the original drafters of our leases, specifically did not include these formulas in order to hedge their positions. The Damon Estate was "fair and reasonable" with its tenants during its tenure by increasing rents during the good times and decreasing rent increases during the bad times. Even when the increases were already in the contract, they deferred then waived the scheduled increases on their own volition. This is how the contract was meant to be exercised. Currently, if the dispute goes to arbitration, "traditional" valuation standards will be applied. The Damon Estate contracts were purposely meant to be non-traditional.

In HRPT's written testimony, they have stated that this bill interferes with the expectations of the parties and changes the agreed upon terms of the affected lease contracts. The fact is that HRPT has chosen to ignore the expectations and agreed upon terms that the lease rents be "fair and reasonable" by trying to impose rents that are 50 to 90% above market rents. HRPT states that

the lease is "designed to re-align the rental rate to market, whether the result is an increase OR a decrease to the rental rate." In the latest Colliers Monroe Friedlander 3<sup>rd</sup> quarter 2008 Industrial Market Briefing, market indicators show a decrease in industrial rental rates for 2009. Yet, HRPT insists that they are being fair by asking for annual increases and rates that are clearly above market. They claim to have "worked diligently with tenants to reach creative lease solutions that reflect the current market conditions," but the unprecedented support for Citizens for Fair Valuation by small businesses proves otherwise. None of us would be here in this room today if HRPT lived up to its part of the contract.

Also in HRPT's written testimony is a statement that the proponents of this bill are large, wealthy, Mainland investors. There is nothing large, wealthy, or mainland about my company and nothing could be further from the truth about the vast majority of the businesses in Mapunapuna who could use your support.

Does this bill act as a substantial impairment of a contractual relationship? I believe it does not. The main focus of this bill does not try of re-define the term "fair and reasonable." Apparently not all, but most reasonable people already know what it means to be fair. Instead, it provides an avenue for both parties to live up to the spirit of the contract.

Is it a reasonable and narrowly-drawn means of promoting a significant and legitimate public purpose? I believe it is. This bill focuses on one style of contract from one landlord. In economic times like this, there are only a few things more important to the people of Hawaii than having the legislature support the local economy. The last thing we need is to have an east coast investment company trying to cover their bad investments on the mainland by unfairly raising rents and putting a bunch of small local companies out of business.

With the local credit markets frozen, it would be mistake for any business to abandon their initial investment in infrastructure because they would not be able to get funding for the cost to relocate and start over. Secondly, we would still be responsible to pay HRPT the rest of the rent for the remaining 15-25 years left on our leases. HRPT would probably hold us to it because no one else will sign a lease with them for the rates they are asking. HRPT knows this and is taking advantage of the situation. Lastly, being centrally located is very important in providing timely delivery to our customers which makes moving westward unfeasible. If our rents double, we will be forced to increase prices and cut costs by decreasing our work force to stay in business. Our customers will then pass on the increased costs to their customers. The cost to maintain and repair vehicles in Hawaii will increase. Most local businesses cannot raise prices and decrease service at the same time and remain competitive.

When HRPT bought the properties at the end of 2003 from the Damon Estate, they were generating a rental income of around 7%. Today, with the stock market down 55%, the real estate investment trust market down 50-70%, and the economy in the worst shape since I can remember, HRPT expects to increase their return by more than double?

**By passing this bill through your committee, you will send a message to the people of Hawaii that you care about the local economy and the plight of small business. I respectfully ask for your support on this bill and thank you for the opportunity to testify.**

**Sincerely,**

**Jason Ideta  
Pacific Jobbers Warehouse, Inc.**