

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

July 22, 2009

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

Hawai'i

Consent to Extension of Lease Term, General Lease No. S-4445 Green Point Nursery, Inc., Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-4-49:26, 27, 28.

APPLICANT AND REQUEST:

Improvements financed by Lessee, Green Point Nursery, Inc. pursuant to Act 180, SLH 2002 in the amount of \$ 214,838.58.

In order for Lessee to amortize this expenditure, the Lessee is requesting an extension of General Lease No. S-4555 of 10 years, commencing on September 4, 2010 and expiring on September 3, 2020 for an aggregate term (initial term plus all extensions) of 45 years.

LEGAL REFERENCE:

Sections 171-22 and 36(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Panaewa Farm Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-4-49:26,27, & 28, as shown on the attached map labeled Exhibit A.

AREA:

30.34 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CHARACTER OF USE:

General agricultural purposes.

TERM OF LEASE:

35 years, commencing on September 4, 1975 and expiring on September 3, 2010.

Requested extension of 10 years commencing on September 4, 2010 and expiring on September 3, 2020.

ANNUAL RENTAL:

Current rent is \$8,340.00, due in semi-annual installments of \$4,170.00 on March 4 and September 4 of each year.

RENTAL REOPENINGS:

Reopenings in the original term were at the end of the 20th, 30th years of the term, or on September 4, 1995 and September 4, 2005. The last rental reopening occurred on September 4, 2005.

Reopenings for the extended term shall be on July 10, 2009 (immediate reopening). As the lease extension is for a period of 10 years, there will be no further rental reopenings.

USE OF LOAN PROCEEDS:

A summary report of expenditures has been submitted by Lessee and is included as Exhibit B. Staff has reviewed the details of the report as well as the tax returns provided by Lessee as required in the conditions of Act 180, SLH 2002 and confirms the expenses incurred were applied to the lease property.

The Lessee has made substantial improvements to the packing/office structure including interior and exterior paint, repairs to the roof, moisture barrier on the ceiling, expanded loading dock including a pre-certified loading area, windows to increase ventilation and renovations to the bathrooms and eating area. Field improvements include the placement of two container storage units for pesticides and equipment. There have also been extensive plantings of new and improved anthurium cultivars throughout the growing area.

DCCA VERIFICATION:

Place of business registration confirmed: YES X NO __
Registered business name confirmed: YES X NO __
Applicant in good standing confirmed: YES X NO __

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for an appraisal for the immediate rental reopening.

REMARKS:

General Lease No. S-4445 was sold at public auction on September 4, 1975 to Harold T. Tanouye, Jr. An agreement to sub-lease a portion of the property was made between Harold T. Tanouye, Jr. and Vantage Partners, and consented to by the Board at its meeting of January 26, 1979 under agenda item F-1-b, and a second, to Makai Nursery at its meeting of January 23, 1981 under agenda item F-1-a.

Still further, the Board consented to the assignment of General Lease No. S-4445 from Harold T. Tanouye, Jr., to Green Point Nurseries, Inc. at its meeting of March 23, 1984 under agenda item F-1-e.

At its meeting of July 26, 1991, under agenda item F-1-c, the Board consented to the assignment of Sublease of a portion of GL S-4445 from Makai Nursery, Assignor to Vantage Partners, Assignee. The sublease agreement expired in the year 2000.

On July 5, 2006, the Chairperson approved the sublease agreement between Green Point Nurseries, Inc., Sublessor, to Vantage Nursery, LLC, successor company to Vantage Partners, as Sublessee.

The Lessee is requesting an extension of lease so that the expenses incurred through the substantial improvements to the property can be amortized. GL S-4445 is scheduled to be transferred to the Department of Agriculture pursuant to Act 90 SLH 2003. It is anticipated that the lease will be transferred within the next two years. The DOA has reviewed this request and has no objection to the extension of the lease term.

The Lessee is compliant with the terms and conditions of the lease with regards to rent, insurance and performance bond. The Lessee submitted a conservation plan approved by the Chairperson on February 15, 2007.

The Assignee has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

July 10, 2009

The last rental reopening occurred on 9/4/2005. There are no further rental reopenings. There are no outstanding rental reopening issues.

The property has been developed, utilized and maintained by the Lessee as a commercial anthurium nursery, substantially for the purpose for which it was leased (general agriculture).

RECOMMENDATION:

1. Authorize the extension of General Lease No. S-4445 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current lease extension form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other conditions as may be prescribed by the Chairperson which are in the best interests of the State.

Respectfully Submitted,



Gordon C. Heit
Land Agent *KEN*

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson *ll*

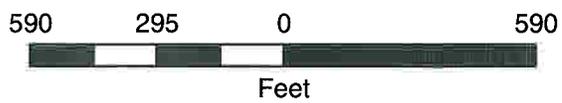


EXHIBIT B

Panaewa Improvements

	Panaewa Warehouse	Storage Containers	Leasehold Improvemt
June 2008	1561.58		
July 2008	40126.46		
August 2008	46256.21	2577.19	7150.00
September 2008	7399.54	30563.34	
October 2008	11335.67	18704.65	
November 2008	30503.72	129.66	
Dec 2008 to April 2009	18530.56		
	155713.74	51974.84	7150.00

Summary:

Warehouse	155713.74
Storage Containers	51974.84
Leasehold Improvemt	7150.00
	214838.58

THE SENATE
TWENTY-FIRST LEGISLATURE, 2002
STATE OF HAWAII

RECEIVED
LAND DIVISION
2007 JUL -8 P 3:25

S.B. NO. 2242
S.D. 1
H.D. 1

A BILL FOR AN ACT

RELATING TO PUBLIC LAND LEASES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 171-36, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§171-36 Lease restrictions; generally. (a) Except as
4 otherwise provided by law, the following restrictions shall
5 apply to all leases:

- 6 (1) Options for renewal of terms are prohibited;
- 7 (2) No lease shall be for a longer term than sixty-five
8 years, except in the case of a residential leasehold
9 which may provide for an initial term of fifty-five
10 years with the privilege of extension to meet the
11 requirements of the Federal Housing Administration,
12 Federal National Mortgage Association, Federal Land
13 Bank of Berkeley, Federal Intermediate Credit Bank of
14 Berkeley, Berkeley Bank for Cooperatives, or Veterans
15 Administration; provided that the aggregate of the
16 initial term and extension shall in no event exceed
17 seventy-five years;

EXHIBIT "C"



- 1 (3) No lease shall be made for any land under a lease
2 which has more than two years to run;
- 3 (4) No lease shall be made to any person who is in arrears
4 in the payment of taxes, rents, or other obligations
5 owing the State or any county;
- 6 (5) No lease shall be transferable or assignable, except
7 by devise, bequest, or intestate succession; provided
8 that with the approval of the board of land and
9 natural resources, the assignment and transfer of a
10 lease or unit thereof may be made in accordance with
11 current industry standards, as determined by the
12 board; provided further that prior to the approval of
13 any assignment of lease, the board shall have the
14 right to review and approve the consideration to be
15 paid by the assignee and may condition its consent to
16 the assignment of the lease on payment by the lessee
17 of a premium based on the amount by which the
18 consideration for the assignment, whether by cash,
19 credit, or otherwise, exceeds the depreciated cost of
20 improvements and trade fixtures being transferred to
21 the assignee; provided further that with respect to
22 state agricultural leases, in the event of foreclosure



1 or sale, the premium, if any, shall be assessed only
2 after the encumbrances of record and any other
3 advances made by the holder of a security interest are
4 paid;

5 (6) The lessee shall not sublet the whole or any part of
6 the demised premises except with the approval of the
7 board; provided that prior to the approval, the board
8 shall have the right to review and approve the rent to
9 be charged to the sublessee; provided further that in
10 the case where the lessee is required to pay rent
11 based on a percentage of its gross receipts, the
12 receipts of the sublessee shall be included as part of
13 the lessee's gross receipts; provided further that the
14 board shall have the right to review and, if
15 necessary, revise the rent of the demised premises
16 based upon the rental rate charged to the sublessee
17 including the percentage rent, if applicable, and
18 provided that the rent may not be revised downward;

19 (7) The lease shall be for a specific use or uses and
20 shall not include waste lands, unless it is
21 impractical to provide otherwise; and



1 (8) Mineral and metallic rights and surface and ground
2 water shall be reserved to the State.

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

7 (1) Modify or eliminate any of the restrictions specified
8 in subsection (a);

9 (2) Extend or modify the fixed rental period of the lease;
10 or

11 (3) Extend the term of the lease

12 to the extent necessary to qualify the lease for mortgage
13 lending or guaranty purposes with [~~the Federal Housing~~
14 ~~Administration, Federal National Mortgage Association,~~
15 ~~Department of Veterans Affairs, Small Business Administration,~~
16 ~~United States Department of Agriculture, Federal Land Bank of~~
17 ~~Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley~~
18 ~~Bank for Cooperatives, or any other]~~ any federal mortgage
19 lending agency [~~qualified to do business in the State, and their~~
20 ~~respective successors and assignees, or]~~ to qualify the lessee
21 for any state or private lending institution loan, private loan
22 guaranteed by the State, or any loan in which the State and any



1 private lender participates [~~provided that the private lender~~
2 ~~shall be qualified to do business in the State,~~], or to amortize
3 the cost of substantial improvements to the demised premises
4 that are paid for by the lessee without institutional financing,
5 such extension being based on the economic life of the
6 improvements as determined by the board or an independent
7 appraiser; provided [~~further~~] that the approval of any extension
8 shall be subject to the following:

- 9 (1) The demised premises have been used substantially for
10 the purpose for which they were originally leased;
- 11 (2) The aggregate of the initial term and any extension
12 granted shall not be for more than fifty-five years;
- 13 (3) In the event of a reopening, the rental for any
14 ensuing period shall be the fair market rental at the
15 time of reopening; [and]
- 16 (4) Any federal or private lending institution shall be
17 qualified to do business in the State;
- 18 (5) Proceeds of any mortgage or loan shall be used solely
19 for the operations or improvements on the demised
20 premises;
- 21 (6) Where improvements are financed by the lessee, the
-- lessee shall submit receipts of expenditures within a



1 time period specified by the board, otherwise the
2 lease extension shall be canceled; and

3 [+4+] (7) The rules of the board, setting forth any
4 additional terms and conditions, which shall ensure
5 and promote the purposes of the demised lands.

6 (c) The board at any time during the term of any intensive
7 agricultural, aquaculture, or mariculture lease and when
8 justified by sound economic practices or other circumstances,
9 may permit an alternative agricultural, aquaculture, or
10 mariculture use or uses for any portion or portions of the land
11 demised. As a condition to permitting alternative uses, the
12 board may require such other modifications, including rental
13 adjustments or changes in the lease as may be necessary to
14 effect or accommodate the alternative use or uses. An
15 alternative use or uses may be allowed by the board upon:

- 16 (1) The application of the lessee;
- 17 (2) Consent of each holder of record having a security
18 interest in the leasehold; and
- 19 (3) A finding by the board that the alternative use or
20 uses are in the public interest.

21 (d) The board, from time to time, during the term of any
22 agriculture, intensive agriculture, aquaculture, commercial,



1 mariculture, special livestock, pasture, or industrial lease,
2 may modify or eliminate any of the restriction specified in
3 subsection (a), extend or modify the fixed rental period of the
4 lease, or extend the term of the lease upon a showing of
5 significant economic hardship directly caused by:

6 (1) State disaster, pursuant to chapter 209, including
7 seismic or tidal wave, tsunami, hurricane, volcanic
8 eruption, typhoon, earthquake, flood, or severe
9 drought; or

10 (2) A taking of a portion of the area of the lease by
11 government action by eminent domain, withdrawal, or
12 conservation easement; provided that the portion taken
13 shall not be less than ten per cent of the entire
14 leased area unless otherwise approved by the board;
15 and provided that the board determines that the lessee
16 will not be adequately compensated pursuant to the
17 lease provisions.

18 (e) The approval of any extension granted pursuant to
19 subsection (d) shall be subject to the following:

20 (1) The demised premises has been used substantially for
21 the purposes for which they were originally leased;



1 (2) The aggregate of the initial term and any extension
2 granted shall not be for more than fifty-five years;

3 (3) The rental shall not be less than the rental for the
4 preceding term;

5 (4) The rules of the board, setting forth any additional
6 terms and conditions which shall ensure and promote
7 the purposes of the demised lands; and

8 (5) The length of the extension shall not exceed a
9 reasonable length of time for the purpose of providing
10 relief and shall in no case exceed five years."

11 SECTION 2. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 3. This Act shall take effect upon its approval.

APPROVED BY THE
GOVERNOR ON

JUN 25 2002

