

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

July 13, 2012

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

OAHU

Deny the Request for Rent Reduction and Consider Request for Mutual Cancellation of General Lease No. 5708, if appropriate; Landscape Hawaii, Inc., Lessee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-027:016

APPLICANT:

Landscape Hawaii, Inc., a domestic corporation.

LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waimanalo, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-1-027:016 as shown on the map attached as **Exhibit A**.

AREA:

19.961 acres, more or less.

ZONING:

State Land Use District: Agricultural
City & County of Honolulu LUO: A-1

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:

Intensive Agriculture or Pasture Purposes.

LEASE TERM:

Thirty (30) year lease commencing from April 1, 2006.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

REMARKS:

The subject parcel was previously leased to Christian Meunier and Candy Lake under GL 3861 until the lease expired on August 9, 2004. Ms. Lake operated an animal shelter under the name of Sylvester Foundation on the parcel until she was evicted from the parcel on March 3, 2005.

Prior to the above-referenced eviction, the Department solicited application for a 30-year lease in June 2004. Due to reluctance of Ms. Lake allowing prospective bidders to inspect the parcel, the Department decided to conduct a guided site inspection for the prospective applicants. The inspection party included the current lessee, Landscape Hawaii, Inc. ("LHI") and staff from the division.

Staff understands that after the eviction, the Department agreed to demolish some structures, remove the debris left by the former lessee, hire a professional cleaner to clean the remaining dwelling, and install fencing around the property fence before handing over the property to LHI.

On March 10, 2006, the Chairperson issued a right of entry after learning about the vandalism on the parcel¹. The Chairperson waived the rent for the right-of-entry period, which covered from March 10, 2006 to September 10, 2006, or at an earlier date upon the sole discretion of the Chairperson."

The lease was eventually signed on March 23, 2006 commencing from April 1, 2006. The first 6-month rent (\$18,250), document and map fees (\$55), and advertising costs (\$544.28) were paid by LHI on June 30, 2004, i.e. the date of auction.

¹ Opening paragraph of the right-of-entry as in Exhibit B states, "[i]n order to prevent [vandalism] from happening again, we are issuing this maintenance right-of-entry."

The Department received another payment of 6-month rent (\$18,250) around February 2007. At the same time, LHI submitted a letter dated February 21, 2007 to the Chairperson (**Exhibit B**) seeking resolution of the billings and requesting the State to honor its agreement to clean up the parcel for LHI's operation. In addition, LHI requested a 20% rent reduction retroactive to the beginning of the lease until the matter is resolved.

By its letter dated January 11, 2008 (**Exhibit C**), LHI reiterated its immediate concerns "are: lease rent amounts do not correspond to the Lease payment schedule and therefore generate unwarranted delinquency notices, the matter of a missing meter box, and the incorrect fencing of the property."

On June 1, 2009, Land Division informed Fiscal Office to change the billing date to April 1, 2008 because "billing date should be April 1, 2008 when State completed moving the location of fence line in the back of the property, installed fencing along ditch, and removed abandoned container/trash from property".

Since the last payment received in February 2007, the Department did not receive any rent payment from LHI.

Due to the staff turn-over, LHI's request for a Board hearing was not processed until today. The current amount owed is \$127,750, equivalent to 3.5 years rent payable.

STAFF RESPONSES:

For discussion purposes, staff summarizes LHI's request as "the State has not fulfilled its obligation in delivering the property to LHI on time. Such delay and other incident caused unnecessary delays and jeopardized the plan by LHI to utilize the parcel." Staff will respond (in *italics*) to the allegations by LHI separately in the following paragraphs:

1. LHI alleged that the condition of the parcel at the time of the pre-auction site inspection provided a condition of the parcel, which was different from the actual condition when the parcel was delivered to LHI two years later.

Staff notes that the 2004 public auction bid packet for the parcel, under paragraph 13, Condition of the Property states, "... all parcels shall be leased in an "AS IS" condition..." The condition on the parcel is better than that in the pre-auction site inspection because the Department had taken extra steps by installing fence, cleaning the former dwelling, and removing trash from the parcel. Staff is not aware of any similar cleanup efforts for other auction parcel on Oahu.

2. LHI complained that the Department failed to fence a portion of the parcel with an area of about four (4) acres, which meant that LHI could not use the said area.

Staff notes the bid packet did not provide any provision regarding fencing off the parcel, including this four-acre portion. In addition, staff understands this four-acre parcel was not used by anyone since eviction in 2005. Therefore, staff cannot agree that the lack of fencing jeopardized the plan of LHI.

3. LHI complained that DLNR should have processed the demolition permit earlier so the City and County of Honolulu would be able to remove two dwellings from the assessment. In short, LHI was paying real property taxes based on three dwellings instead of only one on the ground.

Staff notes that the issue of dwellings relating to real property tax assessment falls under the jurisdiction of the City and County of Honolulu. LHI should approach the City for any appropriate adjustment.

4. LHI complained about the missing meter box previously seen in the pre-auction site inspection. The lack of meter box requires LHI to install a new one subject to the current requirement of the utility company. It involves extra cost and makes the LHI's plan of utilizing the dwelling not feasible.

Staff has checked with the department maintenance crew and note that there is no record of any electric box being removed from the parcel. Both the staff and the crew understand that the meter box is the property of the utility company. It is the lessee's responsibility to secure the utility services. Staff cannot agree that the State is responsible for providing a replacement meter.

CURRENT SITUATION:

At the time of writing this submittal, the amount owed is \$127,750. Staff believes that the previous administration had done everything possible in utmost good faith trying to help a successful bidder establish a new operation. The condition of the parcel and the vandalism that happened on the property are something beyond the department's control. However, the State should by no means be held responsible for those incidents and/or replacement works. Upon review the situation, staff maintains that LHI does have a valid obligation to pay the outstanding rent.

Another option is both the Board and LHI agree to mutually terminate lease, provided that LHI removes all the improvements installed by LHI during its occupancy, and the State keeps the rental payment and other fees and costs paid to date.

RECOMMENDATION: That the Board:

1. Deny the request for 20% rent reduction retroactive to the commencement date of General Lease No. 5708; and choose either option 2 or 3 provided below:
2. Agree with the staff position as mentioned above and require Landscape Hawaii,

Inc. pay all the delinquent rent within 30 days of the Board date.

OR

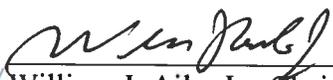
3. Authorize the mutual cancellation of General Lease No. 5708 covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current mutual cancellation document form, as may be amended from time to time;
 - B. Landscape Hawaii, Inc. shall remove all improvements installed during its occupancy of the subject parcel;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

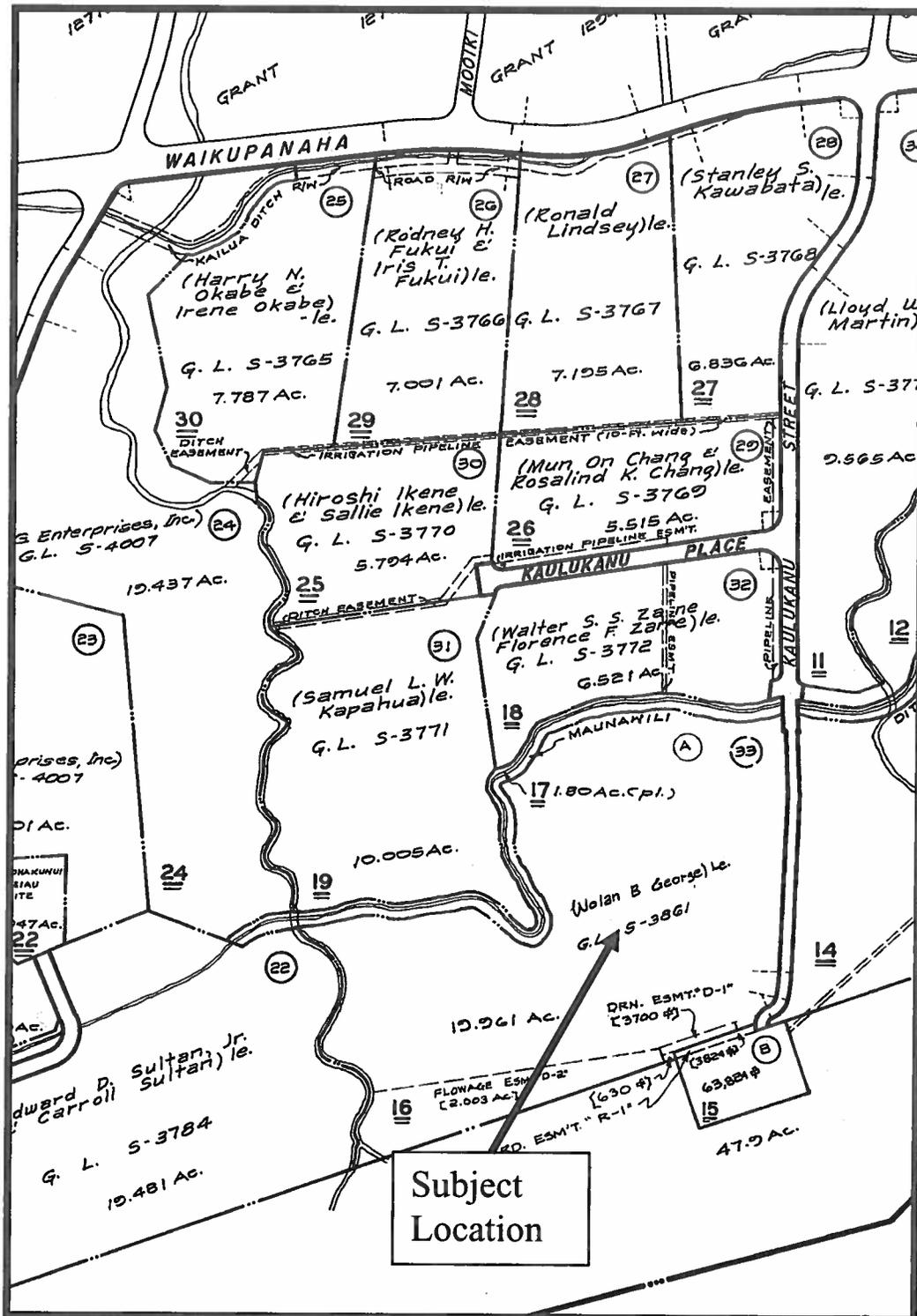


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



TMK (1) 4-1-027:016

EXHIBIT A

February 21, 2007

Mr. Peter T. Young
Chairperson,
State of Hawaii
Department of Land and Natural Resources
Post Office Box 621
Honolulu, Hi 96809

Dear Mr. Young,

Subject: Lease payment and issues remaining per State land, Waimanalo, Oahu,
Tax Map Key 4-1-27:016.

I have made payment to the Fiscal Office, payment date 2/16/07, for the above leased land for period, 10/01/06 thru 3/31/07. There still remains confusion with regards to the billing period for which this applies and I would like to clear up this matter. While I was at the District Office advising Cecile Santos of the payment, I was told that I am to be notified by Charlene Enoki as to when to make payments and that the District Office was not aware that I had been sent a Notice of Default.

I received a Right-of-Entry Permit commencing on March 10, 2006 and ending on September 10, 2006, with a waiver of rent authorized by you pursuant to the Land Board's delegation of authority to issue Rights-of-Entry. I complied with all applicable laws, statutes and government regulations subject to the terms and conditions stated in the permit. Somehow, the Attorney's General office was not advised of the agreed upon waiver of rent as stated in Section 14 of the permit and has since flagged me as a delinquent lessee. I trust that this confusion can be cleared up once the proper documents are available to all parties?

If I may briefly review the history of this property with you and outstanding issues with regards to parties concerned:

May /June 2004

Preliminary walkthroughs of property with Charlene Enoki and other DLNR representatives. Walkthroughs include individuals interested in bidding on the property. During walkthroughs, discussion includes cleanup and restoration of property to acceptable condition to future lessee.

June 18, 2004

The Sylvester Foundation is denied a Request for Waiver at a DLNR Board meeting.

EXHIBIT " B "

illegally return to the A-frame property during the day/evening to feed animals.

The office domicile is vandalized resulting in the removal of the entrance porch, screens, windows, and doors. The wind, rain, and animals can now enter the domicile as the windows and screens are gone. The weather degrades the interior and exterior of the domicile beyond the normal wear and tear and the floor, carpet, walls, and ceiling are damaged.

June 2005

All necessary bids are in for the agreed upon provisions offered by the State to transfer the property to Landscape Hawaii in a clean and orderly condition, pay for the costs and expenses for disposal, removal, or storage of the personal property of the prior lessee.

Provisions:

Demolish and dispose of Club House, designated facilities and stockpiles.

Clean and renovate A-frame

Clean and renovate Office area

Clean up possible dumped toxic materials

Remove Matson container

Choice Fencing is assigned Chain-link front fence area and Sun Systems is contracted for the balance of the perimeter fence area.

July 2005

Per Charlene Enoki: No renovation on A-frame.

A Contractor has been hired by the State to demolish the Club House which is the third domicile noted on the lease. Contractor is also to demolish and remove two horse stall areas, miscellaneous debris, and remove the Matson container.

August 2005

State workers trim and clear the front of the property in anticipation of Choice Fencing putting up Chain-link fence. Work to begin the last week of October 2005.

November 2005

State workers again trim and clear the front of the property in anticipation of the Chain-link fence being installed as work was not done in October.

December 2005

Chain-link fence fronting the property is finalized. The day after the fence is in and gates installed, the gate fronting the A-frame is rammed and the concrete plug holding the gatepost upright is dislodged. Choice Fencing is immediately called in to replace the gatepost. Two days later it happens again and vandals enter the property, paint the inside of the garage walls with red paint and leave disparaging remarks re: the DLNR and fencing

property. This time the gatepost is not repaired but heavy chains and combination locks hold the fence gates closed.

End of 2005:

Still lacking the balance of the fencing (perimeter) that was to have been completed in 2005.

Clean up of property still incomplete.

Transfer of property is incomplete and lease still not signed.

February 2006

Perimeter fence is partially completed.

March 2006

Right-of-Entry Permit is issued to Landscape Hawaii, Inc. for maintenance of State land to decrease the amount of vandalism on the property. Effective date: March 10, 2006 and ending September 10, 2006. (See Attachment, Right-of-Entry Permit) However, walkthroughs by Landscape Hawaii representatives reflect that the fencing is not according to the area designated in the lease as the boundary of the property. Calls made to the office of the DLNR requests correction to the fencing error. Also, the work order was to also include approximately 50' of chain link fence abutting the property's entrance gatepost and front chain link fence thereby providing security at the gate area fronting Kaulukānu Street.

General Lease no. S-5708 signed, dated: March 23, 2006 with effective dates: April 1, 2006 and terminating March 31, 2036. Please note that the lot is now not as described in General Lease no. S-5708 and the DAGS survey of the property with regards to Section 11 and its relationship to "Lot 22 of Waimanalo Agricultural Subdivision, the direct azimuth and distance being..." being approximately 648.50 feet and subsequently, sections 12, 13, and 14 of the survey "...to the point of beginning and containing an area of 19.961 Acres, More Or Less."... as the fencing has removed 4 (four) acres, MOL, from use by Landscape Hawaii.

June 2006

This is the third and final walkthrough with DLNR personnel since April of 2006, to clarify the situation regarding the mistake in fencing the perimeter of the property. In attendance: Bob Medeiros, Cecile Santos, 2 reps from Sun Systems and three reps from Landscape Hawaii.

The Sun Systems rep., Gary Bianco, site supervisor of the crew that installed the perimeter fence was asked why they did not follow the marked, tagged, and cleared perimeter area for the fence. His response was that Cecile Santos had told them to move the fence back and away from the marked property boundary. Cecile Santos was there and acknowledged that yes he had told

them to move the fence line. The group walked the area and there was consensus that the area in question was incorrectly fenced. Cecile measured the area fenced off from Landscape Hawaii and established that approximately 4 (four) useable acres were not included within the property line.

Sun Systems recommends enclosing the additional 4 (four) acres along side the already established fence line, rather than removing the already installed fence line, and joining the two areas with a livestock gate. The area in question requires approximately 190 T-posts with a 10-foot run, corner posts every 100 feet, and four-strand wire. At this time, no gate is available along this fence line area thereby disallowing Landscape Hawaii's use and/or access to the 4 (four) acres. The Sun Systems' engineer there that day estimated that approximately 6 weeks would be needed to have manpower and materials available to complete the job. In addition, the extra 50' of chain link fence abutting the front gate area is included in the work order.

Several calls have been made to the DLNR office to find out about the status of the pending work. No answers are available.

A question remains that if the RFP was for the correct linear run of fencing as stated by the State from both surveys and walking the area, what happened to the balance of materials that should have gone up on the property when the work order was changed to less than requested? Did the State pay for and not receive the amount of fencing contracted for?

Another question: If the contract was not executed properly, why is the lessee being penalized? In other words, why is the present lease rent for the entire 19.961 acres when it was demonstrated that since February 2006, 4 (four) useable acres were removed from use to Landscape Hawaii (approximately 20%). And when will the balance of the land be returned as is stated in the TMK and be able to be utilized fully by Landscape Hawaii, the lessee to the land?

June 14, 2006

Landscape Hawaii, Inc. signs a Cooperative Agreement with the Windward Oahu Soil and Water Conservation District.

September 2006

Right-of-Entry Permit expires. General Lease No. S-5708 to commence effective immediately as Right of Entry Permit expires.

State already holds payment for lease as Landscape Hawaii had paid for the first 6 (six) months of the lease on the day following the auction date, July 1, 2004. Payment was to have been applied for period July 1, 2004 through December 31, 2004, but transfer of

property did not occur as contracted in original agreement. (See Attachment 2, Facsimile Transmittal)

Landscape Hawaii begins work on the property to clean up A-Frame and establish a nursery, plant areas.

October 2006

The City assesses property taxes for three domiciles for the property when in actuality there are only two – the Club House was torn down by the State in 2005 although it is still reflected in City records. When will the State notify the City of the change?

December 2006

The AG's office sends out a delinquency notice for period 10/01/06 through 3/31/07.
Kyle Ushijima calls Charlene Enoki and is told not to pay the lease rent until she straightens out the matter with the AG's office.

End of 2006

Fencing is still not completed (perimeter and front gate areas).
Matson container still on property.
Stockpiles of dumped material of prior lessee still on the property.

January 2007

Kyle Ushijima receives another notice and a letter stating that he is delinquent with regards to paying the lease rent.
Charlene Enoki specifically tells Kyle Ushijima not to pay until the lease dates are clarified and on file correctly.

February 2007

This month Landscape Hawaii is faced with A Notice of Default. (See Attachment, Notice of Default)
Also, Cecile Santos submits Demolition Plan to Planning and Permitting Dept. that should have been processed in 2005. Is the City assessment correct now for property taxes? Two and not three domiciles? Cecile also advises Kyle Ushijima that the property perimeter fence is to remain as is and will not be corrected by the State. An error by the State?

Current Status:

- *the AG's office shows Landscape Hawaii in arrears for 6 months lease rent
- *City still seeking taxes for 3 (three) rather than 2 (two) domiciles
- *Landscape Hawaii is in the process of cleaning the areas that the State said it would clean, i.e. the stockpile areas, removing the Matson container, etc. and starting up the nursery business on property which has 'gone to weed' for two years

*fencing is still not done according to the perimeter boundary as designated by the State Survey and front gate area is still unsecured

*unfenced area and unmarked area of this TMK is open to squatters and parties entering the area from the Mahailua Street side – patrolling and restricting access is difficult without proper boundary lines as reflected in a fence line

*lease amount reflects the lease fee on 19.961 Acres, MOL and does not take into account the unavailable 4 (four) acres incorrectly fenced off by the State in February 2006

*unanticipated expenses and work involved with cleaning and renovating domiciles that have been abandoned and vandalized for almost two years (from eviction date of Candy Lake)

*the delay in transferring the property (approx. 2 years) to Landscape Hawaii allowed the property to deteriorate; not securing the property and domiciles allowed vandalism, break-ins, stealing the meter box, stealing the roofing, breaking windows, removing doors and porches, etc. to go unchecked. The result is that now more serious renovations are needed which require authorization from the Building and Permit Dept.

**what we have today is not what we were led to believe we would assume two years ago, i.e. condition of property and size of property.

Mr. Young, as you can see by the above, it has been a frustrating and epic journey for all parties. You were in the private sector and understand that time represents both money and opportunity; I felt that I have lost both with regards to this situation. Working with the State has been frustrating, to say the least.

I have discussed the above problems with Charlene Enoki and Cecile Santos only to find that their hands are either tied or their time is unavailable to work out these problems. Often it seems that the authority does not go with the responsibility to get things done.

Clarification of the lease rent billing periods and amount due are priorities at this time as I am not a delinquent lessee. Also, I would hope that the State sees the inequity of charging me for the entire parcel when I cannot access all the land nor secure the land from outsiders. I would ask for a lease reduction of 20% retroactive to the beginning of my lease until the matter is reconciled.

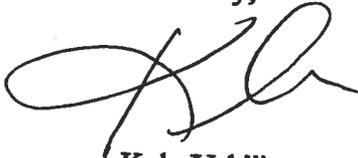
As the fencing matter impacts us both, I would ask that the State work with Sun Systems and complete the perimeter and front gate areas. I would also ask the State to honor its agreement to clear the land of the stockpiles that pose a hazard to my employees and areas for nursery and pasture use and to also remove the Matson container.

If it is beyond your delegation of authority to authorize the above, I would request that I be placed on the agenda for a DLNR meeting to discuss the issues. It would serve both

our interest to have all of this behind us.

If you would like further insight into these matters, please feel free to call me at 836-5332 ext. 24 or my cell,

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Ushijima', written in a cursive style.

Kyle Ushijima,
President
Landscape Hawaii Inc.

cc: Charlene Enoki
Mark Bennett
Cecile Santos



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

MAR 10 2006

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

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

Mr. Kyle Ushijima, President
Landscape Hawaii, Inc.
2621 Waiwai Loop
Honolulu, Hawaii 96819

Dear Mr. Ushijima:

Subject: Right-of-Entry Permit to Landscape Hawaii, Inc. for Maintenance of
State land, Waimanalo, Oahu, Tax Map Key 4-1-27:016.

We have completed the installation of the fencing along the front of the leasehold and are processing the final execution of the lease for the site. We have been informed that after the installation of the front fencing, the lot has been vandalized. In order to prevent this from happening again, we are issuing this maintenance right-of-entry.

We are processing the execution of the lease (General Lease No. S-5708). This right-of-entry will enable you to maintain the site until the lease is fully executed.

Pursuant to the authority granted by the Board of Land and Natural Resources at its meeting of September 28, 2001, (Item D-4), Landscape Hawaii, Inc. is hereby granted a maintenance right-of-entry permit to occupy, secure, and maintain the premises shown on the attached map in an orderly manner in compliance with all applicable laws, statutes and government regulations and subject to the following terms and conditions:

1. The permit shall commence on March 10, 2006, and end on September 10, 2006, or at an earlier date upon the sole discretion of the Chairperson of the Board of Land and Natural Resources.
2. Landscape Hawaii, Inc. shall procure at its own expense, and maintain during the entire period of this right-of-entry, from an insurance company or companies licensed to do business in the State of Hawaii, a policy or policies of comprehensive public liability insurance in an amount acceptable to the Department (\$300,000 per incident/\$500,000 aggregate) insuring the State of Hawaii against all claims for personal injury, death, and property damage;

that said policy shall cover the entire right-of-entry area, including all improvements and grounds and all roadways or sidewalks on or adjacent to the said right-of-entry area in the control or use of Landscape Hawaii, Inc. Landscape Hawaii, Inc. shall furnish the Department 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 Department of any intention to cancel any policy sixty (60) calendar days prior to actual cancellation. The procuring of this policy shall not release or relieve Landscape Hawaii, Inc. of its responsibility under this right-of-entry as set forth herein or limit the amount of its liability under this right-of-entry.

3. Landscape Hawaii, Inc. shall be responsible for cleaning and restoring the area to a condition satisfactory to the Department of Land and Natural Resources upon completion of the permit.
4. Landscape Hawaii, Inc. shall comply with all laws, statutes, ordinances, rules and regulations of the Federal, State, and County governments relative to the use of the subject area including those relating to public health.
5. Landscape Hawaii, Inc. shall indemnify, defend and hold harmless the State of Hawaii, Department of Land and Natural Resources from and against any loss, liability, claim or demand for property damage, personal injury, and death arising out of any act or omission of Landscape Hawaii, Inc. under this approval or relating to or connected with the granting of this approval.
6. Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Landscape Hawaii, Inc. and his consultants, contractors and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area any such materials except to use in the ordinary course of the maintenance.

7. Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf agree to indemnify, defend and hold the State harmless, from any damages and claims resulting from the release of hazardous materials on the right-of-entry area occurring while Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf is/are in possession or elsewhere if caused by Landscape Hawaii, Inc., its consultants, contractors and/or persons acting for or on its behalf. These covenants shall survive the expiration or earlier termination of this right-of-entry.
8. For purposes of this right-of-entry, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous substance, or oil as defined in pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, whether existing as of the date hereof, previously enforced, or subsequently enacted.
9. Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general.
10. Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf shall not store any personal belongings at the subject property during the effective period of this right-of-entry.
11. All costs associated with the maintenance within the right-of-entry area shall be the sole responsibility of Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf.
12. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered, Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry shall stop work and contact the State Historic Preservation Division in Kapolei at (808) 692-8015 immediately.
13. The Department of Land and Natural Resources reserves the right to impose additional, but responsible terms and conditions as it deems necessary while this right-of-entry is in force.

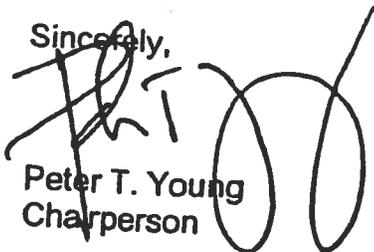
14. Pursuant to the Land Board's delegation of authority to me to issue rights-of-entry, I am authorized to waive rent for rights-of-entry for any government-related project. As your project meets this requirement, I hereby waive rent.

Should you have no objections to the above-mentioned items, kindly sign in the space provided below and submit the following to the Land Division no later than March 10, 2006:

1. Copy of signed concurrence;
2. Copy of your liability insurance policy.

Should you have any questions, please contact Cecil Santos at our Land Division Office, at (808) 587-0433 or fax at (808) 587-0455.

Sincerely,



Peter T. Young
Chairperson

I CONCUR:

Landscape Hawaii, Inc., a Hawaii corporation

By 
Kyle K. Ushijima

March 16, 2006

Its: President

c: Land Board Member
OCCL
Central Files
District Files



LANDSCAPE HAWAII INC.

2621 Waiwai Loop • Honolulu, Hawaii 96819 • Phone (808) 836-5332 • Fax (808) 836-5336

FACSIMILE TRANSMITTAL

Date : October 13, 2006

To : Charlene DNLR

From : Kyle Ushijima

Phone Number : _____

Fax Number : 587-0455

Project : _____

Subject : Payments

Number Of Pages Including This Sheet : 3

Message : Please refer to the attached billing which indicates payment
being due for the period of 10/01/06 -- 03/31/07. Per our
agreement, the lease was supposed to start on September 1,
2006. Our right of way was the only request we had initially
to get on to the property. We are still in the process of
cleaning the area in which we have discovered debris, such as,
barbed wire, tires, corrugated metal, etc. The State was
supposed to have removed all of the debris mentioned
above. We are trying to keep a good relationship with the
State as being our Landlord but they are not keeping up with
the agreement. Evidently, the various departments are not
communicating with each other. I have already lost a big
sum of money without any profits. Any assistance you can give
us will be greatly appreciated. I have been excessively patient
in this matter. Please respond to this problem and have it
addressed by October 19, 2006. We are looking forward to
your continued support in our efforts to remedy this situation
so we can go on with our efforts to excel in our Nursery business.

Aloha. Kyle Ushijima

DEPARTMENT OF LAND AND NATURAL RESOURCES



FISCAL OFFICE
 P.O. BOX 621
 HONOLULU, HAWAII 96809-0621
 (808) 587-0353
 10/10/06

DOCUMENT NUMBER
gl5708

COST CENTER: 0520
 LANDSCAPE HAWAII INC.
 2621 WAIWAI LOOP
 HONOLULU, HI 96819

SOURCE: 1720

TOTAL DUE: \$18,250.00

PLEASE DISREGARD THIS BILL IF PAYMENT HAS BEEN MADE

AMOUNT PAID: _____

PLEASE DETACH AND RETURN ABOVE PORTION WITH YOUR PAYMENT FOR PROPER CREDIT

REFERENCE		APPTO	BILLING PERIOD	DESCRIPTION	AMOUNT
DATE	NUMBER				
10/01/2006	C-107683	Balance Due	10/01/2006 - 03/31/2007	RENTALS, LEASED LANDS (10/2006)	18,250.00

Please Make Check Payable To: "Land & Natural Resources"
 PAST DUE AMOUNTS MAY BE SUBJECT TO A 1% PER MONTH FINANCE CHARGE AND A LATE FEE
 THE STATUS OF YOUR ACCOUNT IS AS FOLLOWS:

CURRENT	30	60	90	TOTAL DUE
0.00	18,250.00	0.00	0.00	\$ 18,250.00

DOCUMENT NUMBER

gl5708

LINDA LINGLE
GOVERNOR



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

PETER T. I
CHAIRMAN
DEPARTMENT OF LAND AND NATURAL RESOURCES
ROBERT K. M
DEPUTY DIRECTOR
DEAN NAKA
ACTING DEPUTY DIRECTOR
APRIL KERRY
DEPUTY DIRECTOR
IN CHARGE OF CONSERVATION AND RESEARCH
COMMISSIONER OF WATER RESOURCES
CONSERVATION AND RESEARCH
ENGINEER
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVATION
LAND
STATE PARKS

January 26, 2007

Ref.:OD-GL5708

Certified Mail: 1682 8091

LANDSCAPE HAWAII INC.
2621 WAIWAI LOOP
HONOLULU, HI 96819

Received
1/27/07

Dear Lessee:

NOTICE OF DEFAULT

Pursuant to the authority granted me by the Board of Land and Natural Resources at its meeting of January 11, 1980, and the breach provision contained in General Lease S-5708 are hereby served a Notice of Default on said lease for failure to do the following:

- Keep lease rental payments current
- Post required Performance Bond
- Post required Fire Insurance Policy
- Post required Liability Insurance Policy
- Other:

Our Fiscal Office informs us that you are in arrears in lease rental payments in the amount of \$ 18,250.00 covering the period October 01, 2006 to March 31, 2007.

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

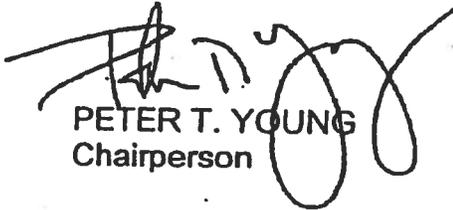
17 2/23

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

1. Cancellation of General Lease S-5708.
2. Retention of all sums heretofore paid under General Lease S-5708 as liquidated damages.
3. Termination of all your rights and obligations under General Lease No. S-5708.
4. Initiation of legal action to collect the delinquent lease rental owing the State of Hawaii under General Lease S-5708.
5. Forfeiture of your lease performance bond.

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

Very truly yours,



PETER T. YOUNG
Chairperson

cc: Land Board Member
Central Office
Fiscal Office
Bond Holder (First Insurance Co. of Hawaii)
District Office
✕

DEPARTMENT OF LAND AND NATURAL RESOURCES



FISCAL OFFICE
 P.O. BOX 621
 HONOLULU, HAWAII 96809-0621
 (808) 587-0353
 02/11/07

DOCUMENT NUMBER
 gl5708

COST CENTER: 0520
 LANDSCAPE HAWAII INC.
 2621 WAIWAI LOOP
 HONOLULU, HI 96819

SOURCE: 1720

TOTAL DUE: \$18,250.00
 PLEASE DISREGARD THIS BILL IF PAYMENT HAS BEEN MADE

AMOUNT PAID: _____

PLEASE DETACH AND RETURN ABOVE PORTION WITH YOUR PAYMENT FOR PROPER CREDIT

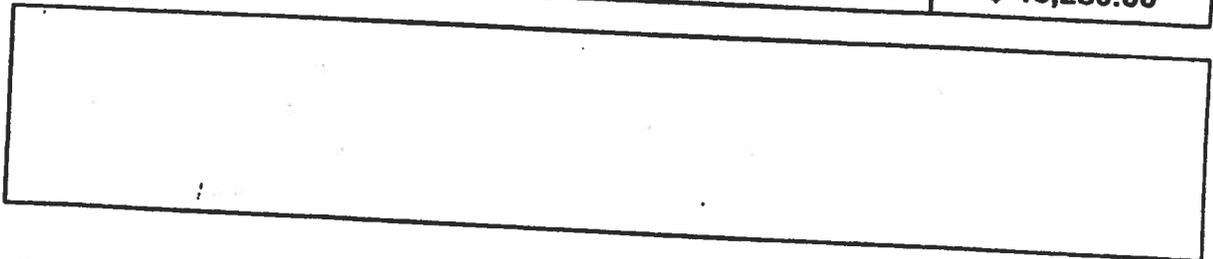
REFERENCE		APPTO	BILLING PERIOD	DESCRIPTION	AMOUNT
DATE	NUMBER				
10/01/2006	C-107683	Balance Due	10/01/2006 - 03/31/2007	RENTALS, LEASED LANDS (10/2006)	18,250.00

Please Make Check Payable To: "Land & Natural Resources"
 PAST DUE AMOUNTS MAY BE SUBJECT TO A 1% PER MONTH FINANCE CHARGE AND A LATE FEE
 THE STATUS OF YOUR ACCOUNT IS AS FOLLOWS:

CURRENT				TOTAL DUE
0.00	0.00	0.00	18,250.00	\$ 18,250.00

DOCUMENT NUMBER

gl5708



LANDSCAPE HAWAII, INC.
 2621 WAIWAI LOOP
 HONOLULU, HI 96819
 836-5332

NO. 353
 Date. FEB 2 2007

Pay To The Order of STATE OF HAWAII

The sum of 18,250 and 00/100ths \$ 18,250.00

Dollars



First Hawaiian Bank
 MAIN BANKING REGION
 HONOLULU, HAWAII

[Handwritten Signature]



LANDSCAPE HAWAII INC.

2621 Waiwai Loop • Honolulu, Hawaii 96819 • Phone (808) 836-5332 • Fax (808) 836-5336

January 11, 2008

Ms. Charlene Enoki
Dept. of Land and Natural Resources
Post Office Box 621
Honolulu, HI 96809

Dear Charlene,

Subject: Lease payment and issues remaining per State Land, Waimanalo, Oahu,
Tax Map Key 4-1-27-016.

After our discussion on Tuesday, December 18, 2007, I thought it would be best if I summarized our predicament regarding Landscape Hawaii's Lease land in Waimanalo.

At this time, the immediate concerns are: the Lease rent amounts do not correspond to the Lease payment schedule and therefore generate unwarranted delinquency notices, the matter of a missing meter box, and the incorrect fencing of the property.

The State's billing and scheduled payments are incorrect with regards to one another and the actual date that we assumed the property. Charlene, as you know, I signed the Lease at your request and urging with an incorrect commencement date, with the understanding that a correction would be forthcoming with both sides performing as requested in the Lease agreement. Please advise the Fiscal Office of the correct dates and amounts as Landscape Hawaii continues to receive unwarranted delinquency notices that have impacted Landscape Hawaii's credibility with its Bond and insurance companies.

The State voluntarily allowed Candy Lake and the Sylvester Foundation to remain on the property unsupervised six months beyond her given eviction date of June 2004. A raid ultimately removed her in March 2005. At the time of the auction and eviction action, Landscape Hawaii received numerous phone calls and threats regarding the impropriety of removing the animal sanctuary. I took many of the calls myself and explained the reality of the situation at the sanctuary with regards to drugs being sold there, discovering drug paraphernalia in the domiciles, and finding fighting chickens 'housed' there for a fee. In fact today we are still plagued by individuals who either try to buy or sell drugs in what they believe is a safe haven for drug business, the former animal sanctuary.

After the eviction, the State virtually abandoned the property for over a year and did nothing to facilitate the transfer of the property to Landscape Hawaii. Instead, the State

EXHIBIT "C"

issued a Right-of-Entry permit in March 2006: the Right-of-Entry permit not issued for the sake of Landscape Hawaii but in response to the vandalism and further damage to the property and buildings while the State remained in control of the property. The property was finally transferred to Landscape Hawaii in September 2006. Why the original transfer did not occur two years earlier in September 2004 is still unclear and the question still remains unanswered. Nevertheless, due to the fault of the State in not upholding the conditions of the auction agreement and Lease agreement and not transferring the property in 2004, Landscape Hawaii has now incurred additional and unexpected expenses along with lost revenues of approximately \$420,000 for the last three years. In the meantime, in good faith from Landscape Hawaii, the State has received a payment for deposit (6 months lease rent in 2004) as well as an additional 6 months of Lease rent (February 2007) for an approximate total of \$36,500.00. Along with those payments, Landscape Hawaii paid fees for the cost of documents, the conveyance tax, and advertising costs related to the Notice of Sale document. Landscape Hawaii continues to hold a Bond on the property, pay for insurance, and also pays City taxes for the domiciles on the property.

The removal of the meter box that occurred again while the State was in control of the property and Candy Lake was still there is another major obstacle for Landscape Hawaii's business operation. The domicile on the first level had the meter box and electricity - this was noted during walkthroughs prior to the auction. Also noted during the walkthroughs was the fact that there was a family living in the domicile, indicating that the building was in a livable condition in 2004. When Landscape Hawaii was finally given access to the property in 2006, the condition of the buildings was no longer what was viewed during the walkthroughs and not what we were led to believe we were bidding on at auction. Through no fault of Landscape Hawaii, the domicile now sits in an abandoned condition, i.e. without a meter box and electricity, vandalized, missing windows and screens, and needing major renovation. The State must act responsibly and fairly and return the property to the condition observed during the walkthroughs. Without a meter box and electricity, an effective business operation cannot proceed.

The incorrectly installed perimeter fence that virtually obstructs access to four useable acres has still not been addressed. At a meeting at Rep. Ito's office on May 9, 2007, you suggested that we correct the fence issue ourselves. We would agree to that, however, before work begins, we would like to receive a written agreement that stipulates that Landscape Hawaii will be compensated by way of lease credit for the material and work expenses. Also, there should be credit given for the portion and time that the area (approximately 20%) remains unavailable to Landscape Hawaii due to the incorrect fencing of February 2006.

Also, in addition to the incorrect fencing of the four acres, there is the issue of the missing 50' chain-link return fence abutting the lower gate. We would prefer that the State remedy that portion of the fence as soon as possible.

There was some State activity on the property in June and July 2007, as State workers demolished and removed abandoned sheds and construction material from the property.

We look forward to more activity from the State in 2008. Aside from that, little else was done to correct the remaining problems. Along with the immediate concerns already mentioned, the Matson container is still parked on the first level awaiting removal and other additional junk is scattered throughout the property.

Charlene, before we went to auction, I was advised by an agent of the State that to get action on the property after the auction, it would be necessary to sue the State. I decided not to proceed via a lawsuit but instead I gave the State the benefit of the doubt and assumed that the State would live up to its obligations and promises. I have been patient but financial losses are prompting me to reconsider. The corrected billing amount and scheduling to the Fiscal Department should also take into consideration the added expenses incurred by Landscape Hawaii to get the property up and running while we address these issues with the State.

I thank you for your attention and help in these matters and I await hearing from you. Please feel free to e-mail me at kyle@landscapehi.com or office 836-5332 ext-24.



Kyle Ushijima, President
Landscape Hawaii, Inc.

cc: Gov. Linda Lingle
Lt. Gov. Duke Aiona
Laura Thielen, Chairperson
Rep. Ken Ito
Sen. Fred Hemmings
Rep. Tommy Waters
Waimanalo Ag. Association

WHAT THE STATE AGREED TO DO

- Tear down one domicile that was beyond repair or renovation
- Tear down barn/stall structure deemed dangerous and unstable
- Fence property perimeter; in addition, install 6' high, 50' chain-link return fence on the first level. The original fencing was removed to allow State contractors access to the property.
- Clean up and make available two buildings on the property for assumption by Landscape Hawaii (these two buildings were lived in at the time of the initial walkthroughs and after the auction was finalized)
- Remove stockpiles (2) of dumped items from prior lessees
- Remove Matson container
- Clean up and remove debris in areas and remove junk, i.e. barbed wire, 50-gal. drums, old tires, discarded lumber and telephone poles from the four levels of the property

WHAT THE STATE HAS DONE

- Tear down one domicile that was beyond repair or renovation
- Tear down barn/stall structure deemed dangerous and unstable
- Incorrectly fence a portion of the property disallowing access to approximately 4 (four) acres of useable area; ignored chain-link return fencing on first level.
- Abdicate responsibility for the two remaining buildings on the property
- Ignore the stockpiles and allow grass and shrubbery to grow over the stockpiles making it more difficult to identify and remove the rubble
- Ignore the Matson container on the property
- Ignore the junk that still remains scattered throughout property

WHAT LANDSCAPE HAWAII HAS DONE

- Pay the entire Lease rent amount for the use of the property despite not having access to the entire parcel (less 4 useable acres)
- Pay Lease rent amounts that do not correspond to the Lease payment schedule
- Receive multiple Delinquency notices without reason.
- Waited almost two years and then assumed unexpected expenses and downtime to get the property up and running due to the fact that the property had "gone to weed" from the more than two years that it was neglected by the State.
- Assume the A-frame structure and reconstruct the domicile to make it livable, i.e., new roof, clean and gutting the inside to remove the mold, flooring, and walls that had deteriorated due to abandonment, neglect, and constant vandalism.

WHAT NEEDS TO BE DONE

- Renovate and repair the two-story building i.e., replacing the broken windows, stolen screens, missing doors and deal with the malicious vandalism and general deterioration of the building. Also deal with the meter box issue – a meter was seen and was in working order during the walkthroughs and up to and after the bidding was conducted and finalized. The family living in the two-story house vacated at the end of August 2004, at which time the meter was still in the building. The meter box disappeared while the former Lessee was allowed to remain on the property during the 9 extensions given to her (evicted late March 2005). The meter box is a major obstacle for Landscape Hawaii as HECO considers the property abandoned and does not 'grandfather' the structure for electricity. The result is that now authorization may be required from the Building and Permitting Dept. to bring the building to Code as a functional facility office for Landscape Hawaii.
- Correct the fencing and include the surveyed area to make the entire property accessible to Landscape Hawaii. As suggested by Sun Systems representative - add an additional enclosed area to the already established fence line rather than removing the existing fence line. Join the two areas with a livestock gate.
- Add the agreed upon 50' chain-link return fence abutting the lower gate area.
- Repair the A-Frame chain-link fence front gate post
- Straighten out the agreed upon date for Lease commencement taking into consideration the Right-of-Entry permit dates and lease payment exemption for said period.
- Immediately remove Delinquency notices on file for Landscape Hawaii.
- Within two working days, send a letter to Landscape Hawaii stating that the Delinquency notices were incorrectly sent; Landscape Hawaii can then forward this letter to necessary parties.
- Advise the City of the fact that there are two domiciles on the property rather than three as Landscape Hawaii is still being taxed for three.
- Remove the Matson container.
- Remove the stockpiles and additional junk/rubble scattered on the property.

ADDITIONAL INFORMATION

- During the initial walkthroughs, those interested in bidding on the property were not allowed to walkthrough the A-frame or view the entire upper level as the Lessee would not agree to a walkthrough. Viewers were prohibited from viewing the perimeter of the property. An abandoned shed not viewed at the time now remains on the property.
- What Landscape Hawaii ultimately received in 2006 is not what was seen during the initial walkthroughs of 2004.
- Although without merit and good reason, Default Notices were sent out by the State to Landscape Hawaii. These Default Notices, now on record for Landscape Hawaii have affected the credit history and worthiness of Landscape Hawaii; this

has negatively impacted the ability of Landscape Hawaii to lease State property at Kapalama Military Reservation, State Harbors Division. The Default Notices have also jeopardized the credibility of Landscape Hawaii with its Bond Company, First Insurance.