

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

April 24, 2015

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

Hawaii

Approve Mediated Settlement of Rent Reopening Dispute in General Lease No. S-3837, Floral Resources/Hawaii, Inc., a Hawaii corporation, Lessee, Waiakea Homesteads, 1st Series, Lot 18, Block 601, Waiakea, South Hilo, Hawaii, TMK No. (3) 2-2-044:004

APPLICANTS:

Floral Resources/Hawaii, Inc., a Hawaii corporation, Lessee, and Land Division, Department of Land and Natural Resources.

LEGAL REFERENCE:

Section 171-17, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of the Government (Crown) Land of Waiakea, Waiakea Homesteads, 1st Series, Lot 18, Block 601, Waiakea, South Hilo, Hawaii, TMK No. (3) 2-2-044:004, as shown on the attached map labeled Exhibit A.

AREA:

10.00 acres.

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:

Wholesaling, retailing, and packing of nursery products and other related uses.

TERM OF LEASE:

The entire term of the lease is for 55 years. This reopening of rent is for the final 5 years of the lease term, commencing on June 16, 2014 and expiring on June 15, 2019.

ANNUAL RENTAL:

For the period of June 16, 2014 through December 16, 2016, the rent will be \$15,000 per year.

For the period of December 17, 2016 through June 15, 2019, the rent will be \$17,000 per year.

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>
Good standing confirmed:	YES <u>X</u>	NO <u>  </u>

REMARKS:

General Lease No. S-3837 was issued on June 16, 1964 to Hongo Nursery, Inc., a Hawaii corporation, by means of public auction. In 1996, the department was informed by lessee's attorney Alan M. Okamoto that in the past, the shares in Hongo Nursery, Inc., had been purchased by Ben Inouye and the name of the corporation had been changed to Inouye, Inc. Floral Resources/Hawaii, Inc., subsequently purchased the shares of Inouye, Inc., and a decision was made to terminate Inouye, Inc., and to transfer GL S-3837 to Floral Resources/Hawaii, Inc. In 1996, a consent to assignment of General Lease No. S-3837 from Gordon Inouye, as Trustee in Dissolution of Inouye, Inc., to Floral Resources/Hawaii, Inc., was approved by the Board and executed.

For the last ten year period, from June 16, 2004 to June 15, 2014, the lessee has paid an annual rent of \$6,500.

The department hired an independent real estate appraiser to determine the reopened rental value for the last five years of the lease, which are June 16, 2014 through June 15, 2019.<sup>1</sup> The rental value was determined to be \$28,700 per year.

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<sup>1</sup> The Lease provides the rental for any reopening period be the higher of the rent for the immediately period or the fair market rent at the time of reopening.

Lessee did not accept the department's appraised rent and hired its own real estate appraiser. Lessee's appraiser determined the rental value to be \$9,450 per year.

Disputes in rent reopenings for leases of public lands are governed by Hawaii Revised Statutes Section 171-17, as amended. Prior to July 1, 2014, rent disputes were generally arbitrated by a three-member arbitration panel. However, the Legislature amended HRS Section 171-17 effective as of July 1, 2014 to require (non-binding) mediation by a single mediator prior to (binding) arbitration.<sup>2</sup> Under this amended provision, the parties agreed to have attorney Andrew Wilson serve as the mediator and scheduled mediation for April 1, 2015 in Hilo.

Mediation between the parties was conducted in an all-day session on April 1, 2015 in Hilo. Lessee's representatives were Vernon Inouye, President/Director, Gordon Inouye, Secretary/Treasurer/Director, and attorney Alan Okamoto. The department was represented by Russell Tsuji, Land Division administrator, Gordon Heit, Hawaii district land agent, Pamela Matsukawa, Land Division appraisal and real estate specialist, and deputy attorney general Daniel Morris.

The mediation began with a site visit of the lessee's property and a site visit of the only property used as a comparable by both the lessee's appraiser and department's appraiser. Discussions began immediately after the site visit. Many issues were discussed during mediation. However, the parties had agreed to confidentiality during mediation to allow for candor and flexibility and in the event mediation was not successful and arbitration proceedings had to be conducted. Therefore, the details of the mediation discussions are not set forth in this submittal.

The mediation session was in fact successful, subject to the approval of the board, the terms of the mediated settlement on rent are as follows:

1. Rent is established as follows:

For the period of June 16, 2014 through December 16, 2016, the rent will be \$15,000 per year.

For the period of December 17, 2016 through June 15, 2019, the rent will be \$17,000 per year.

2. The lessee has provided to the department a performance bond amount that exceeds the performance bond requirement of the lease. The lease uses an old provision for the amount of the bond. The lessee's actual bond is much larger than the \$876 (two times the annual rental established at public auction) required by the lease. The \$876 will remain on deposit as the performance bond and the lessee will withdraw the excess and

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<sup>2</sup> Additionally, under the amended law, arbitrations are now submitted to a single arbitrator for determination, rather than to a three-member panel. The amending act is Act 168 Session Laws of Hawaii 2014.

use the excess toward payment of the unpaid portion of the new rent from June 16, 2014 to June 16, 2015.

3. The parties also agreed that the rent established through this confidential mediation process shall not be used or considered in any future rental determination by the parties or by anyone else.

RECOMMENDATION:

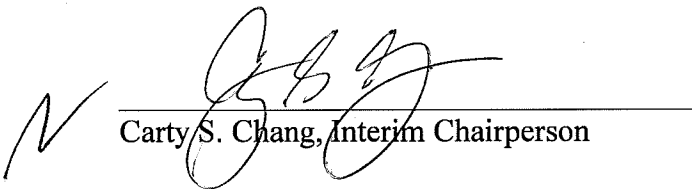
That the Board approve the mediated settlement for the rent reopening in General Lease No. S-3837, Floral Resources/Hawaii, Inc., a Hawaii corporation, for the period of June 16, 2014 through June 15, 2019, as set forth hereinabove.

Respectfully Submitted,

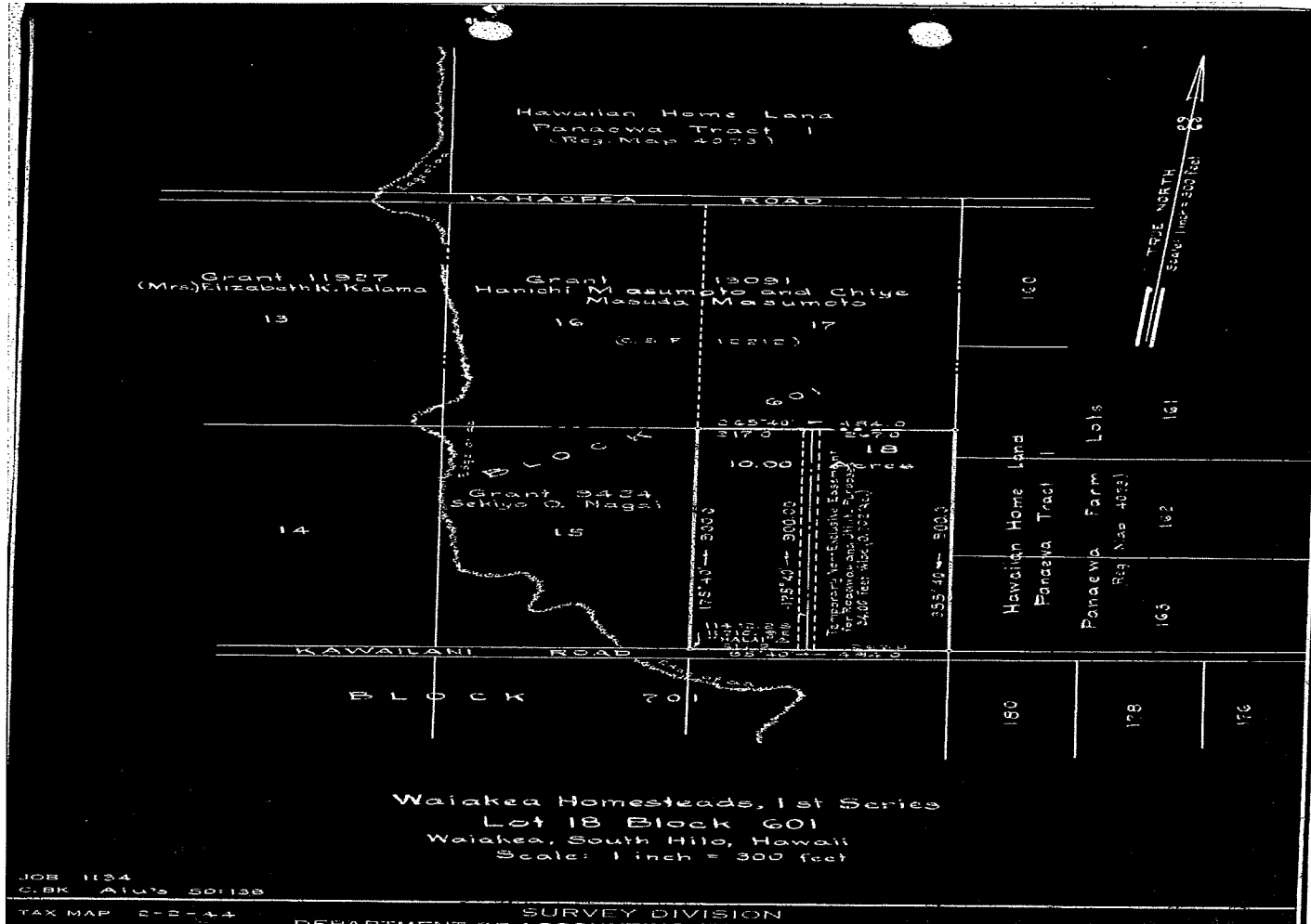


Russell Y. Tsuji  
State Lands Administrator

APPROVED FOR SUBMITTAL:



Carty S. Chang, Interim Chairperson



**EXHIBIT A**