CONCURRING OPINION BY GINOZA, J.

I concur that Plaintiff-Appellant/Cross-Appellee Robert Kutkowski (Kutkowski) is not entitled to specific performance or other relief based on his attempt to exercise the subject right of first refusal to purchase (right-of-first-refusal) during the period that he was holding over. Given the plain language of the License Agreement involved in this case, I conclude that the right-of-first-refusal applied during the term of the license and was not in effect during the holdover period.

The parties assert different interpretations of the relevant provisions in the License Agreement, but do not contend that the provisions are ambiguous. Kutkowski asserts, in the alternative, that if the language of the agreement were deemed to be ambiguous, parol evidence shows the parties' intent was to extend the right-of-first-refusal to the holdover tenancy. Looking no further than the four corners of the License Agreement, no ambiguity exists. See Found. Intern., Inc. v. E.T. Iqe Const., Inc., 102 Hawaiʻi 487, 497, 78 P.3d 23, 33 (2003). "In the absence of any ambiguity, a question of construction arising upon the face of the instrument is for the court to decide." Id. (citation omitted).

"[A]n agreement should be construed as a whole and its meaning determined from the entire context and not from any particular word, phrase or clause." Leeward Bus Co. v. City and Cnty. of Honolulu, 58 Haw. 64, 68–69, 564 P.2d 445, 448 (1977) (quoting Ching v. Hawaiian Rests. Ltd., 50 Haw. 563, 565, 445 P.2d 370, 372 (1968)). "Absent an ambiguity, contract terms should be interpreted according to their plain, ordinary, and accepted sense in common speech." Hi Kai Inv., Ltd. v. Aloha Futons Beds & Waterbeds, Inc., 84 Hawaiʻi 75, 78, 929 P.2d 88, 91 (1996) (citation omitted).

Reading the License Agreement as a whole, I respectfully differ from the majority by concluding that the right-of-first-refusal applied during the term of the license and not during the holdover period. Paragraph 2 states:

> 2. Option to Purchase: Licensor expressly reserves the right to sell the licensed premises ***during the term of this license*** and to place such signs and notices on or about the premises for such purposes, subject only to the rights of the Licensee contained herein. ***In the event Licensor decides to sell the premises, it shall be first offered to Licensee on terms and conditions provided by Licensor;*** PROVIDED, HOWEVER, that Licensee shall have at all times faithfully and punctually performed all of the covenants and conditions of this agreement on the part of Licensee to be performed. Licensee shall have sixty (60) days to accept the Licensor's offer or make a counter offer; PROVIDED, HOWEVER, that if no sales contract is executed within one hundred twenty (120) days after Licensor's initial offer, (1) Licensor shall be free to offer the premises for sale to the general public and (2) ***this license agreement shall be automatically amended with occupancy to continue on a month to month term.*** Should the premises be thereafter sold during the term of the month to month license, Licensor shall give Licensee forty-five (45) days prior notice of termination of this license, upon which Licensee shall relinquish all rights hereunder.

(Emphasis added).

The first sentence, which specifies the relevant period as "during the term of this license," is not a stand-alone provision. Rather, as a whole, paragraph 2 in my view sets forth the rights and obligations of the parties in the event the Licensor decided to sell the premises during the term of the license. In addition to the first sentence being part of the entire paragraph, Defendant-Appellee/Cross-Appellant Princeville Prince Golf Course, LLC (Princeville LLC) points out that, if no sales contract is executed within the specified one-hundred and twenty day period, the Licensor is free to offer the premises for sale to others and "this license agreement shall be automatically amended with occupancy to continue on a month to month term." Converting the occupancy to a month to month term has practical application during the term of the license, but not during a holdover period. The agreement itself later specifies that any holdover period would already be month to month. The conversion provision in paragraph 2 thus amplifies that the right-of-first-refusal applied during the term of the license.

The above reading of paragraph 2 is consistent with the holdover provision set out in paragraph 22 of the License Agreement, which states:

> 22. Effect of Licensee's holding over: Any holding over after the expiration of the term of this agreement, with consent of Licensor, shall be construed to be a license from month to month, at the same rate as required to be paid by Licensee for the period immediately prior to the expiration of the term hereof, and ***shall otherwise be on the terms and conditions herein specified, so far as applicable***.

(Emphasis added). Where the right-of-first-refusal applies "during the term of this license," it is not a term or condition "applicable" during the holdover period.

Kutkowski asserts that Schimmelfennig v. Grove Farm Co., 41 Haw. 124 (Haw. Terr. 1955) and Pioneer Mill Co. v. Ward, 34 Haw. 686 (Haw. Terr. 1938) support the proposition that the terms and conditions of a written lease continue during a holdover period. I agree with the majority that Schimmelfennig and Pioneer Mill are not dispositive. Neither case dealt with a right-of-first-refusal to purchase the subject property.[1] Moreover, Schimmelfennig recognized and applied the principle that certain terms in a lease may not be applicable "to the new condition of things" during a holdover period. 41 Haw. at 133 ("It has also been held that '[w]hen a tenant holds over, the tenancy is subject to covenants and stipulations contained in the original lease *only so far as are applicable to the new condition of things*.'") (emphasis added and citation omitted). Thus, Schimmelfennig appears to have recognized that the rule in Pioneer Mill -- that a holdover tenancy after expiration of a lease is subject to the same covenants and agreements contained in the lease -- is not absolute. Schimmelfennig and Pioneer Mill do not resolve this appeal.

Rather, based on case law from other jurisdictions, and because in my view paragraph 2 of the License Agreement provides Kutkowski with a right-of-first-refusal *during the term of the*

[1] Pioneer Mill addressed whether a lease provision, requiring the lessee to surrender the premises along with improvements, applied to improvements made during a holdover period. 34 Haw. at 700-01, 704. Schimmelfennig addressed whether, after ten successive leases, an implied covenant to restore leased premises to their condition at the beginning of the first lease applied to a holdover tenant. 41 Haw. at 126-27.

license, such right does not continue during the period that he was holding over after expiration of the term of the license. See Carroll v. Daigle, 463 A.2d 885, 886-87 (N.H. 1983) (adopting as more persuasive "the decision of other jurisdictions which hold that a purchase option which may be exercised only during the term of the lease does not carry over into the holdover tenancy."); Grisham v. Lowery, 621 S.W.2d 745, 749 (Tenn. App. 1981) (adopting the rule that "an option to purchase contained in a lease which is exercisable during the term of the lease is not extended by a holdover tenancy and, therefore, cannot be exercised by a lessee holding over after the expiration of a lease"); Vernon v. Kennedy, 273 S.E.2d 31 (N.C. App. 1981); Gower-Goheen Realty, Inc. v. Braun, 215 So.2d 499 (Fla. Dist. Ct. App. 1968); and D.E. Ytreberg, Annotation, *Holding Over Under Lease, Or Renewal Or Extention Thereof, As Extending Time For Exercise of Option To Purchase Contained Therein*, 15 A.L.R.3d 470, 491-94 (1967).

I respectfully concur on these grounds.