

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

December 11, 2015

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

PSF No.: 15HD-111
Hawaii

Consent to the Assignment of General Lease Nos. S-4303 & S-4379, David S. De Luz Sr., also known as David De Luz, as Assignor, and General Lease No. S-5848, David S. De Luz Sr., Trustee of the David S. De Luz Sr. Revocable Trust dated October 23, 1991, as amended, as Assignor, to Big Island Toyota, Inc., as Assignee; GL S-4303 & S-4379 situated at Waiakea Industrial Lots, Lot B, Block 48, South Hilo, Hawaii, Tax Map Key: (3) 2-2-058:015; GL S-5848 situated at Waiakea House Lots, Lots 15 and 16, Block 39, South Hilo, Hawaii, Tax Map Key: (3) 2-2-037:063.

APPLICANT:

For General Lease Nos. S-4303 & S-4379, David S. De Luz Sr., through Josephine De Luz as Attorney-in-fact pursuant to a General Power Of Attorney.¹

For General Lease No. S-5848, David S. De Luz Sr., Lessee through Wayne Richardson III and Josephine De Luz, Successor Co-Trustees of the David S. De Luz Sr. Revocable Trust.²

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

- GL S-4303 & S-4379: Portion of Government lands of Waiakea Industrial Lots, Lot B, Block 48, identified by Tax Map Key: (3) 2-2-058:015
- GL S-5848: Waiakea House Lots, Lots 15 & 16, Block 39, identified as Tax Map Key: (3) 2-2-037:063, situated at Waiakea, South Hilo, Hawaii

*As shown on the attached maps labeled Exhibit A (GL S-4379 & S-4303) and Exhibit A-2 (GL S-5848).

¹ General Power of Attorney dated July 26, 2011 appointed Josephine De Luz as the Attorney-In-Fact for David s. De Luz, Sr. Document attached as Exhibit B.

² Appointment and Acceptance of Successor Trustee dated February 11, 2014 appointed Wayne Richardson III and Josephine De Luz as Successor Co-Trustees of the David S. De Luz, Sr. Revocable Trust, dated October 23, 1991, as amended. Document attached as Exhibit C.

AREA:

GL S-4303 & S-4379: 65,000 square feet, more or less.

GL S-5848: 39,000 square feet, more or less.

Total Area: 104,000 square feet, 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: YES ____ NO
X

CHARACTER OF USE:

General Industrial purposes.

TERM OF LEASE:

- GL S-4303 & S-4379: 65 years, GL S-4303 commencing on June 11, 1970, GL S-4379 commencing on June 14, 1973, and both expiring on June 8, 2035. The last rental reopening occurred on June 9, 2010. The next rental reopening is scheduled for June 9, 2020.
- GL S-5848: 20 years, commencing on January 1, 2006 and expiring on December 31, 2026. Rental reopening is scheduled for January 1, 2016.

ANNUAL RENTAL:

- GL S-4303: \$30,345.00 per annum.
- GL S-4379: \$44,655.00 per annum.
- TOTAL: \$75,000.00 per annum³.
- GL S-5848: \$72,000.00 per annum.

CONSIDERATION:

No monetary consideration is changing hands in this transaction.

³ For the rental re-opening scheduled for June, 9, 2010, Appraisal Hawaii, Inc. estimated the annual market rent for the property identified with both GL S-4303 and GL S-4379 to be \$75,000.00 per annum. Calculation of annual rent for each lease was based on the percentage of area that each lease covers.

RECOMMENDED PREMIUM:

Not applicable

DCCA VERIFICATION:

ASSIGNOR:

- GL S-4303 & S-4379: Not applicable. Assignor is an individual and as such, is not required to register with DCCA.
- GL S-5848: Not Applicable. Assignor is a Trustee and as such, is not required to register with DCCA.

ASSIGNEE:

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>

BACKGROUND:

General Lease No's. S-4303 and S-4379:

At a public auction held in 1970, General Lease No. S-4303 was awarded to the highest bidder, Kwiki Pacific, Ltd., and subsequently, assigned to Economy Motors, Inc. at BLNR meeting of September 24, 1971 under agenda item F-1, then to David S. De Luz Sr., the present lessee. The BLNR approved the consent to assignment of GL S-4303 to David S. De Luz, Sr. at its meeting dated October 13, 1978, item F-1-g.

At a public auction held in 1973 General Lease No. S-4379 was awarded to the highest bidder, Economy Motors, Inc., and subsequently, assigned to David S. De Luz Sr., the present lessee. The BLNR approved the consent to assignment of GL S-4379 to David S. De Luz, Sr. at its meeting dated October 13, 1978, item F-1-g.

At its meeting of June 23, 1995, under agenda item F-10, the BLNR approved, as amended, the lessee's request to extend the terms of the both leases, modifying the fixed rental periods, the consolidation of Lots 5, 6, & 7 of Block 48, Waiakea House Lots; and consented to a mortgage covering both leased premises. The BLNR's approvals and consent to the mortgage allowed the lessee to construct a new showroom and storage facilities.

In 1996, the consolidation of Lots 5, 6, & 7 into Lot 5-A received final approval from the County of Hawaii, Planning Commission. Consequently, and for real property tax purposes, the County of Hawaii Real Property Tax Division dropped Parcel 36 (previously Lot 6 & 7; 39,000 sq. ft.), which was the parcel previously identified with GL S-4379, into Parcel 15 (previously Lot 5; 26,500 sq. ft.), which is the parcel identified

with GL S-4303. As a result, Parcel 15 (currently Lot 5A; 65,500 sq. ft.) includes both leases, GL S-4303 and GL S-4379.

At its meeting of August 10, 2001, item D-18, the BLNR approved the amendment and restatement of GL S-4303 and GL S-4379, David S. De Luz, Sr., as Lessee, to reflect the consolidated parcels, among other things. Hence, GL S-4303 and GL S-4379 has a combined annual rent that covers a single property identified by both leases.

General Lease No. S-5848:

At its meeting of November 19, 2004, Item D-16, the BLNR approved the sale of a twenty-year lease at public auction for general industrial purposes under General Lease No. S-5848. It was sold to successful bidder, David S. De Luz Sr., Trustee of the David S. De Luz Sr. Trust. GL S-5848 commenced on January 1, 2006. The annual rent is set to be reopened on January 1, 2016.

Both Assignors are currently compliant with all terms & conditions of the three subject leases and have not had a lease, permit, easement or other disposition terminated within the last five years due to non-compliance with such terms and conditions.

PURPOSE OF ASSIGNMENT

The purpose of this Board action is to change the name of all three leases to Big Island Toyota, Inc., a single corporate entity, rather than being assigned to a person or Trust. Requesting consent to assignment of the leases is the only way of changing the title. Big Island Toyota is a De Luz family owned and operated business. Assignors and Assignee are an affiliated individual, trust and corporation. This assignment is essentially just a name change, and as such, there will be no consideration amount involved.

RECOMMENDATION:

That the Board consent to the assignment of General Lease Nos. S-4303 & S-4379, David S. De Luz Sr., also known as David De Luz, , as Assignor; and General Lease No. S-5848, David S. De Luz Sr., Trustee of the David S. De Luz Sr. Revocable Trust dated October 23, 1991, as amended, as Assignor; to Big Island Toyota, Inc., as Assignee; subject to the following:

1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

December 11, 2015

Respectfully Submitted,



 Dan K. Gushiken
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



EXHIBIT A

2-2-58 3RD DIV

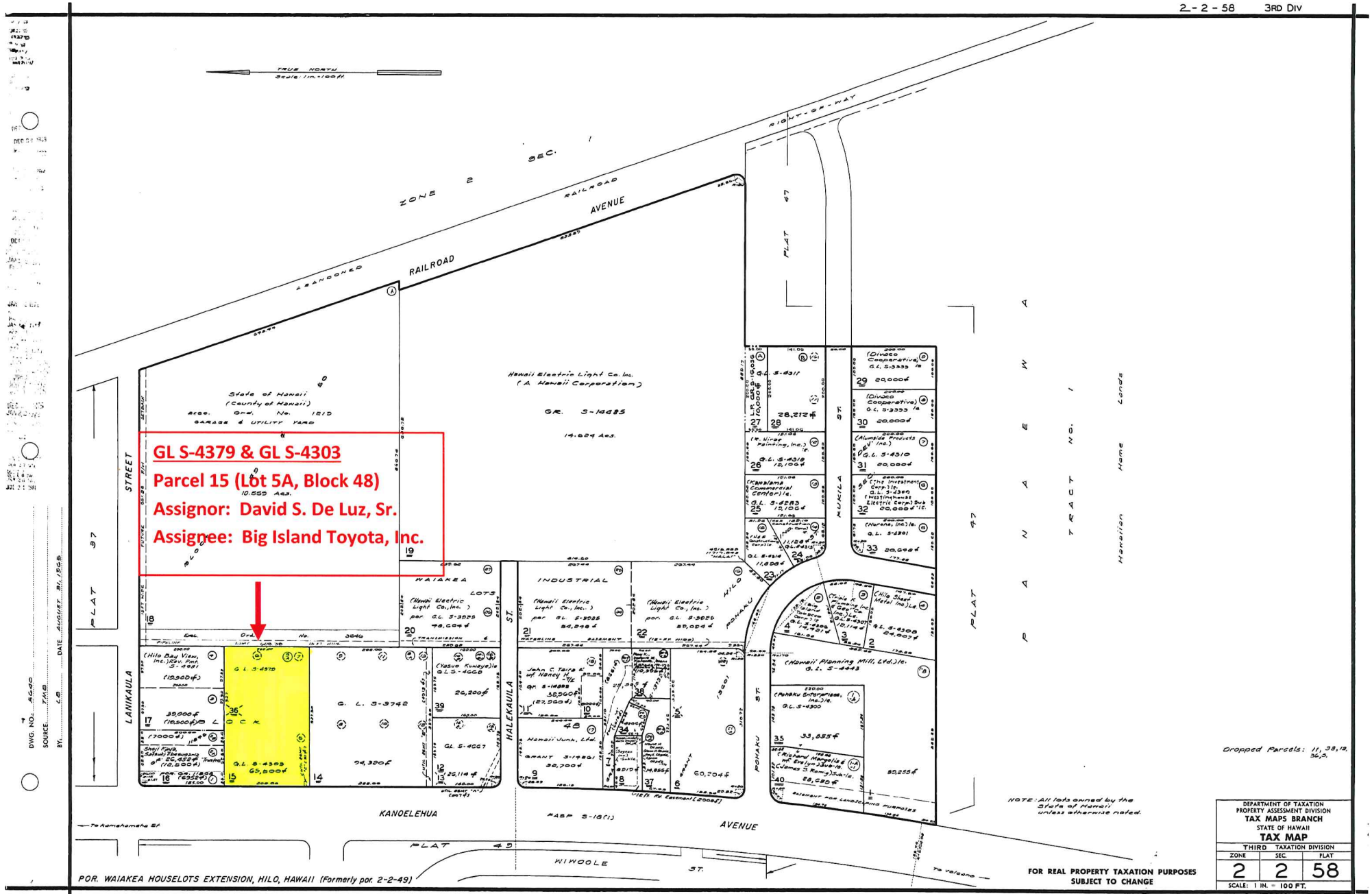


EXHIBIT A-2

GL S-5848

Parcel 63 (Lot 15 & 16, Block 39)

Assignor: David S. De Luz, Sr., Trustee

Assignee: Big Island Toyota, Inc.

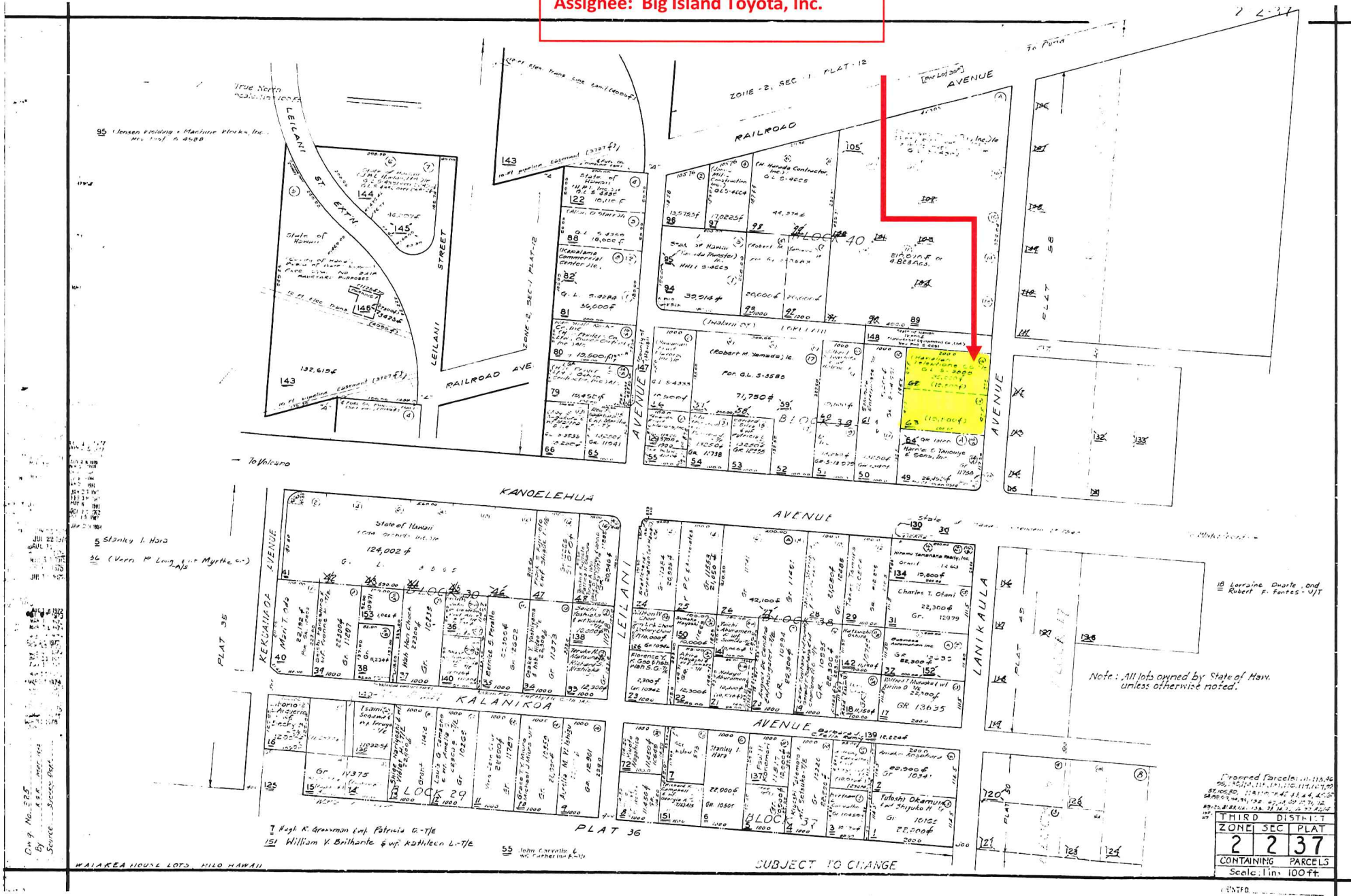


EXHIBIT B

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY Mail () Pickup ()

TITLE OF DOCUMENT:

GENERAL POWER OF ATTORNEY

PARTIES TO DOCUMENT:

DAVID S. DE LUZ, SR.

JOSEPHINE R. DE LUZ

EXHIBIT B

KNOW ALL MEN BY THESE PRESENTS:

That I, DAVID S. DE LUZ, SR., of Paauilo, Hawaii 96776, do hereby appoint JOSEPHINE R. DE LUZ, of Paauilo, Hawaii 96776, my true and lawful attorney, for me and in my name, place and stead, and for my use and benefit, to do and perform any and all acts and things, whatsoever which may be necessary or advisable in the management of my affairs, including all of the following acts:

(1) To exercise all rights that I now have or to which I may be entitled or subsequently acquire, including but not limited to the following: contracts and agreements of any kind, options, covenants, conveyances, real estate interests of any kind, deeds, trust deeds, leases, easements, real estate licenses, bills of sale, leases, mortgages, assignments, insurance policies, insurance benefits, insurance proceeds, annuities, employee, pension, retirement or disability benefits, (whether or not qualified under ERISA and including benefits under 401(k) plans, profit sharing plans, individual retirement accounts, annuities and like benefits), commercial paper of any kind (including but not limited to checks and drafts), bills of lading, warehouse receipts, documents of title, bills, bonds, debentures, bills of exchange, letters of credit, notes, rights and equity interests in any legal entity or trust (whether profit or not for profit), proxies, warrants, brokerage accounts, mutual funds, receipts, withdrawal receipts and deposit instruments, accounts or deposits in, or certificates of deposit of, banks, savings and loan, credit unions, brokerage houses, or other institutions or associations, documents of title, choses in action, demands, licenses, royalties, beneficial, granted or reserved rights or interests as beneficiary, Settlor (Trustor), heir, devisee, or legatee or otherwise, under any laws of inheritance or other laws, a last will and testament or trust agreement (revocable or irrevocable), proofs of loss, evidence of debts, releases, liens, judgments, security agreements, legal rights recognized under federal, state or international law including, but not limited to those for protection of my reputation, bodily injury, pain and suffering, emotional distress, punitive damages, against unlawful discrimination in employment, disability or exercise of civil rights, and any other debt, equity interests or obligations, and any other rights identified elsewhere in this General Power of Attorney; and

(2) To bargain or contract for, purchase, take, receive, sell, mortgage, pledge and in any and in every way and manner to deal in with my goods and merchandise, choses in action and other property (tangible or intangible), in possession or in action, and to release mortgages or security interests in any of my property (tangible or intangible) and to make, do and transact all and every kind of business of whatever kind and nature; to make, amend, cancel, release or terminate any of my contracts or agreements;

(3) To deal with, bargain or contract for, purchase, take, receive, and accept the seisin, title and possession of all real estate, including but not limited to land, improvements on land, condominiums, land trust interests of any kind, fee simple, leasehold or estate for years interests in real estate, and all deeds and instruments of conveyance pertaining thereto; and to let, lease, assign, sublet, bargain and contract for, grant or accept easements and real estate licenses related thereto, sell, release, convey and mortgage real estate and all interests therein, and to release mortgages and any rights or appurtenances thereon, upon such terms and conditions and under such covenants as my said attorney shall see fit;

(4) To exercise all rights relating to any rights on corporations, limited liability companies, general or limited partnerships, cooperatives, trusts of any kind, or any other entity or association, whether for profit or not for profit (collectively "organizations"), including the right to vote any and all shares of stock or other voting equity interest which I may own in any organization and to exercise any and all rights I may have with respect to any stocks, bonds, investments and other interests belonging to me; to appoint any other person or persons as my proxy; and to exercise any other rights I have in such organizations;

(5) To ask for, demand, collect, recover and receive any benefits, entitlements, documents, or sums of money all sums of money, whatsoever as are now or as shall hereafter become due, owing, payable or belonging to me or to which I may be entitled, and to exercise all rights that I have related to the same on my behalf, to adjust, sell, compromise and agree for the same on my behalf and in my name, all endorsements, releases, receipts, and to give acquittances or other sufficient discharges for the same;

(6) To receive, endorse and collect the proceeds of checks, warrants and bonds, including Social Security checks, coupon interest, or other payments, payable to me, drawn on or issued by any person, the United States, any country or state including the State of Hawaii or any political subdivision of said State, or any office, instrumentality or agency thereof;

(7) To withdraw moneys from any personal, checking, commercial and savings accounts, certificates of deposit, letters of credit or funds standing in my name or for my benefit with any bank, savings or trust institution or mutual funds or brokerage houses, and to endorse notes, checks, drafts or bills of exchange which may require my endorsement for deposit as cash or for collection; to have access to open any safe deposit box that I may have in any financial institution, and to take and remove from or add to the contents therein;

(8) To make, execute, verify, file and amend Federal, State and County tax returns, and all other reports, applications and petitions required or permitted by any government;

(9) To execute, create, make, establish and amend estate planning documents, including revocable trusts and trusts and to transfer any of my assets to my trust and to act and use the powers, rights, and privileges as I, as trustee, of my trust or trusts; to make gifts, outright from the trust or otherwise, on my behalf.

(10) To execute and sign any and all consents, releases and waivers for medical, dental, hospital, care home, nursing home and other medical institutions, for treatment, consultation, reports, service and care for me.

(11) To acquire and transfer and sell any and all firearms.

(12) To sign, seal, execute, deliver and acknowledge all instruments in writing, of whatever kind and nature, as may be necessary or proper to the exercise of the powers granted herein.

(13) To fulfill any of my obligations or to satisfy any claims against me in whole or in part, from any of my assets or rights, or to protest, defend or compromise any claims regarding such obligations; to commence, prosecute and enforce, and to defend, answer and oppose, all actions, suits and other legal or equitable proceedings relating to any of my property and my person; and to compromise, refer to arbitration, and to act on my behalf in any such action or proceeding;

GIVING AND GRANTING unto my said attorney full power and authority to do and perform any and all acts and deeds as fully and effectually to all intents and purposes as I might or could do if personally present; and hereby ratifying all that my said attorney shall lawfully do or cause to be done by virtue of these presents.

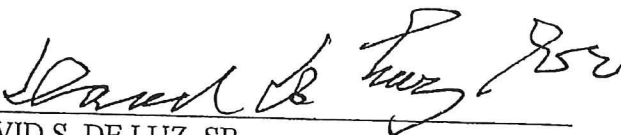
The powers enumerated above are in aid of the general powers herein granted and shall not be construed as limiting or restricting in any way the general powers granted herein.

Provided, any authority granted to my said attorney herein shall be limited so as to prevent this power of attorney from causing my attorney to be taxed on my income and from causing my estate to be subject to a general power of appointment as that term is defined in Section 2041 of the Internal Revenue Code. The powers granted herein shall not include any power to appoint any part of my property to said attorney, attorney's estate, creditors of said attorney or creditors of the estate of said attorney or to satisfy said attorney's legal obligation of support.

This Power of Attorney will not be affected by the disability of the principal within the meaning of Chapter 551D, Hawaii Revised Statutes.

This Power of Attorney shall be in effect until revoked in writing.

IN WITNESS WHEREOF, the undersigned has set his hand this 26th day
of July, 2011.



DAVID S. DE LUZ, SR.

STATE OF HAWAII

COUNTY OF HAWAII

)
) ss:
)

On this 26th day of July, 2011, before me personally appeared DAVID S. DE LUZ, SR., to me personally known who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

CS

Janice Y. Kaneshiro

JANICE Y. KANESHIRO

Notary Public

State of Hawaii

My commission expires: 7/4/2015

Doc.	<u>7/26/11</u>	Pages:	<u>6</u>
Date:	<u>7/26/11</u>		
Name:	<u>JANICE Y. KANESHIRO</u>	<u>3rd</u>	<u>Circuit</u>
Document Description:			
<u>General Power of Attorney from David S.</u>			
<u>De Luz, Sr. to Josephine R. De Luz</u>			
<u>Janice Y. Kaneshiro</u>		<u>7/26/2011</u>	
Notary Signature		Date	
NOTARY CERTIFICATION		(Seal or Stamp)	

EXHIBIT C

Return by Mail (X) Pickup () To:

Total No. of Pages 4

APPOINTMENT AND ACCEPTANCE OF SUCCESSOR TRUSTEE

WHEREAS, **DAVID S. DE LUZ, SR.** (the "Settlor") established that certain unrecorded **DAVID S. DE LUZ, SR. Revocable Trust** dated October 23, 1991, as amended (hereafter the "Trust"), of which the Settlor acted as Trustee;

WHEREAS, the Settlor is currently disabled;

WHEREAS, Article 2-3 of the Trust provides:

Upon the death, disability, or resignation of the settlor as trustee, **FIRST HAWAIIAN BANK** (or any corporate successor to its trust business) shall become the successor trustee, effective upon the date the settlor ceases to act, without the necessity of a vesting order and without responsibility for the prior acts of any trustee hereunder. Upon the resignation or removal of **FIRST HAWAIIAN BANK**, then a successor trustee or trustees shall be selected by the settlor's surviving spouse, or if the settlor's spouse is disabled or deceased, then by the Trust Protector as appointed under Article 2-6.

EXHIBIT C

WHEREAS, FIRST HAWAIIAN BANK declined to act as Successor Trustee, and the Settlor's spouse, JOSEPHINE R. DE LUZ, appointed herself and THEODORE M. RACHLIN to serve as Successor Co-Trustees;

WHEREAS, THEODORE M. RACHLIN has given notice of his intent to resign as Successor Co-Trustee, and Settlor's spouse JOSEPHINE R. DE LUZ has determined that it is advisable to appoint an additional Successor Co-Trustee at this time.

THEREFORE, pursuant to Article 2-3 of the Trust, Settlor's Spouse JOSEPHINE R. DE LUZ hereby appoints WAYNE RICHARDSON, III as a Successor Co-Trustee of the Trust, and WAYNE RICHARDSON, III hereby agrees to serve as a Successor Co-Trustee and to execute and administer the Trust with all due fidelity.

This agreement shall become effective immediately. This agreement may be signed in counterparts.

DATED: February 11, 2014.

JOSEPHINE R. DE LUZ

Settlor's Spouse and Successor Co-Trustee

Wayne Richardson III

WAYNE RICHARDSON, III

Accepting as Successor Co-Trustee

STATE OF HAWAII

)

) ss.

COUNTY OF HAWAII

)

On this _____ day of February, 2014, before me personally appeared JOSEPHINE R. DE LUZ, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Type or Print Name: _____
Notary Public, State of Hawaii

My Commission Expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: _____

☐ Doc. Date: _____ or ☐ Undated at time of notarization.

No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary _____
Date of Notarization and
Certification Statement

Printed Name of Notary _____

(Official Stamp or Seal)

STATE OF HAWAII
COUNTY OF KAUAI

)
) ss.
)

On this 11 day of February, 2014, before me personally appeared WAYNE RICHARDSON, III, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Karen R. Sakimae

Type or Print Name: Karen R. Sakimae
Notary Public, State of Hawaii

My Commission Expires: 11-1-2014

NOTARY CERTIFICATION STATEMENT

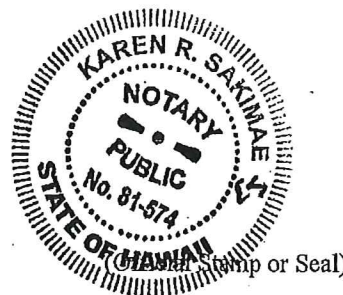
Document Identification or Description: Appointment and Acceptance of Successor Trustee

☒ Doc. Date: 2/11/14 or ☐ Undated at time of notarization.

No. of Pages: 4 Jurisdiction: Fifth Circuit
(in which notarial act is performed)

Karen R. Sakimae 2/11/14
Signature of Notary Date of Notarization and
Certification Statement

Karen R. Sakimae
Printed Name of Notary



Return by Mail (X) Pickup () To:

Total No of Pages_____

APPOINTMENT AND ACCEPTANCE OF SUCCESSOR TRUSTEE

WHEREAS, **DAVID S. DE LUZ, SR.** (the "Settlor") established that certain unrecorded **DAVID S. DE LUZ, SR. Revocable Trust** dated October 23, 1991, as amended (hereafter the "Trust"), of which the Settlor acted as Trustee;

WHEREAS, the Settlor is currently disabled;

WHEREAS, Article 2-3 of the Trust provides:

Upon the death, disability, or resignation of the settlor as trustee, **FIRST HAWAIIAN BANK** (or any corporate successor to its trust business) shall become the successor trustee, effective upon the date the settlor ceases to act, without the necessity of a vesting order and without responsibility for the prior acts of any trustee hereunder. Upon the resignation or removal of **FIRST HAWAIIAN BANK**, then a successor trustee or trustees shall be selected by the settlor's surviving spouse, or if the settlor's spouse is disabled or deceased, then by the Trust Protector as appointed under Article 2-6.

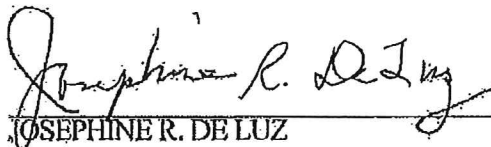
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This agreement shall become effective immediately. This agreement may be signed in counterparts.

DATED: February 11, 2014.


JOSEPHINE R. DE LUZ

Settlor's Spouse and Successor Co-Trustee

WAYNE RICHARDSON, III

Accepting as Successor Co-Trustee

STATE OF HAWAII

)

) ss.

COUNTY OF HAWAII

)

On this 11th day of February, 2014, before me personally appeared JOSEPHINE R. DE LUZ, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Katherine G. Velasco
Type or Print Name: KATHERINE G. VELASCO

Notary Public, State of Hawaii

My Commission Expires: 3-30-2015 *KOV*

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Appointment and
Acceptance of Successor Trustee

☒ Doc. Date: February 11, 2014 or ☐ Undated at time of notarization.

No. of Pages: 4 (including all notary pages) Jurisdiction: First Circuit
(in which notarial act is performed)

Katherine G. Velasco
Signature of Notary

February 11, 2014
Date of Notarization and
Certification Statement

KATHERINE G. VELASCO

Printed Name of Notary



(Official Stamp or Seal)

)

)

Type or Print Name: _____

My Commission Expires:

Document Identification or Description:

No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

**Date of Notarization and
Certification Statement**

(Official Stamp or Seal)