

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

April 12, 2024

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

Hawaii

Consent to Assignment of General Lease No. S-3716, Hawaiian Fresh Products, Inc., Assignor, to Hilo Products, Inc., Assignee, for Commercial Purposes, Kanoelehua Industrial Lots, Waiakea South Hilo, Hawaii, Tax Map Key: (3) 2-2-050:015.

APPLICANT and REQUEST:

Hawaiian Fresh Products, Inc., a Hawaii corporation, as Assignor, requesting consent to assign lease to Hilo Products, Inc., a Hawaii corporation, as Assignee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Kanoelehua Industrial Lots, Lot 1-A, situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-050:015, as shown on the attached map labeled **Exhibit A**.

AREA:

0.5556 acre (24,200 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: NO

CHARACTER OF USE:

Uses allowed under the current County of Hawaii Zoning Code, ML-20, limited industrial.

TERM OF LEASE:

Original term of 55-years commencing on October 29, 1962 and expiring on October 28, 2017.

10-year extension approved commencing on October 29, 2017 and expiring on October 28, 2027 for an aggregate term (initial 55-years plus 10-year extension) of 65-years.

ANNUAL RENTAL:

\$23,000.00 with monthly payments of \$1,916.67.

RENTAL REOPENINGS:

Last reopening, October 29, 2017.
Subject lease to expire October 28, 2027.

CONSIDERATION:

\$445,000.00, of which \$305,657.93 will be used to pay off an existing mortgage on the property and \$42,024.34 to payoff delinquent real property taxes.

RECOMMENDED PREMIUM:

Subject lease commencing on October 29, 1962, predates Act 104 Session Laws of Hawaii 1989 (Act 104), codified at Subsection 171-36 (a) (5), HRS, and made effective May 24, 1989, allowing for an assignment lease premium. As such, a premium is not applicable here as the lease does not allow for a premium.

DCCA VERIFICATION:

ASSIGNOR: Hawaiian Fresh Products, Inc.
Place of business registration confirmed: YES
Registered business name confirmed: YES
Good standing confirmed: YES

ASSIGNEE: Hilo Products, Inc.
Place of business registration confirmed: YES
Registered business name confirmed: YES
Good standing confirmed: YES

APPLICANT REQUIREMENTS:

Applicant shall do the following within 30-days of execution of consent to assignment of subject lease from Hawaiian Fresh Products, Inc. (HFP), as Assignor, to Hilo Products, Inc. (HPI), as Assignee, as shown on the attached Escrow Seller's Statement labeled **Exhibit B**.

1. Applicant shall pay off mortgage loan at Bank of Hawaii of \$305,657.93.
2. Applicant shall pay off back property taxes of \$42,024.34 to the County of Hawaii.

REMARKS:

Under the provisions of Act 32, Session Laws of Hawaii 1962, the Department of Land and Natural Resources (DLNR) was authorized to enter the leasing or leasing with option to purchase of public lands to victims of natural disaster through direct negotiation, other than residential or agricultural purposes.

The subject lease was originally issued to the Hilo Soda Works on October 29, 1962. At its meeting of March 6, 1964, the Board of Land and Natural Resources (Board) approved an amendment of the lessee's name to Masaru Shindo dba: Hilo Soda Works as it was discovered that "Hilo Soda Works" was solely a trade name used by Mr. Masaru Shindo and not a separate legal entity.

Act 104, effective May 24, 1989, amended Subsection 171-36 (a) (5), HRS, and provided for the assessment of an assignment lease premium under certain circumstances.

At its meeting of December 15, 1989, Item F-10, the Board adopted an assignment of lease evaluation policy to conform with Act 104.

At its meeting of November 19, 1999, Item D-11, the Board consented to the assignment of subject lease from the estate of Masaru Shindo, as assignor, to Tamae Shindo, Calvin Shindo, Howard Shindo, and Sandra Deleo (the heirs of the estate of Masaru Shindo), as assignees.

At its meeting of February 25, 2000, Item D-6, the Board consented to assignment of the subject lease from Tamae Shindo, Calvin Shindo, Howard Shindo, and Sandra Deleo, as assignors, to Hawaiian Fresh Products, Inc. (HFP), a packaging and shipping operation of agricultural produces, as assignee.

The subject lease predates Act 104 and does not include a provision on assessment of a lease assignment premium or the method for determining such a premium.¹

¹ As noted below, if the assignment is approved, HPI intends to apply for a lease extension under Act 149 Session Laws of Hawaii 2018 (Act 149). If the Board were to approve the extension, the lease provisions, including the lease assignment provision, would be updated to the current terms and conditions used by the Department of the Attorney General to be consistent with current law, including Act 104, as well as the Board's assignment of lease evaluation policy. (The foregoing is based on the assumption the legal landscape does not change. Staff notes there is a bill moving in the Legislature this session that, if passed into law, would prevent the Board from updating lease terms and conditions unless the lease forms and the Board's leasing practices were "included in rules of the board governing the extension of leases of public lands pursuant to this part or this chapter, adopted by the board in accordance with Chapter 91." See House Bill 2579, House Draft 1. DLNR is opposing the bill.)

At its meeting of August 22, 2015, Item D-15, the Board approved a 10-year extension of the subject lease from October 29, 2017 to October 28, 2027, pursuant to Act 207, Session Laws of Hawaii 2011. At this time the board also amended the character of use from “soft drink manufacturing” to “limited industrial” pursuant to County of Hawaii zoning code ML-20.

On December 5, 2014, HFP executed a Promissory Note in favor of the Bank of Hawaii in the amount of \$530,500.00.

On August 24, 2015, the Chairperson of the Board consented to the Mortgage (referenced above) to Bank of Hawaii, as Mortgagee, in an amount not to exceed \$530,500.00, pursuant to Section 171-22, HRS, as amended, in which HFP’s leasehold interest in the subject property would become security for HFP’s obligation under the Promissory Note.

On December 30, 2015, HFP executed the Mortgage in favor of the Bank of Hawaii of the leasehold interest in subject property for \$530,500.00.

On July 25, 2018, the Chairperson authorized a change in subject lease from quarterly payments to a monthly billing cycle.

HFP has experienced financial difficulties and plans to close its operations. HFP has entered into a purchase contract with HPI to sell its business assets to HPI for \$445,000. However, HFP has two outstanding debts encumbering the subject property: (1) Mortgage loan payoff to Bank of Hawaii of \$305,657.93 and (2) Back property tax payoff to County of Hawaii of \$42,024.34.

While the purchase contract of \$445,000 is sufficient to pay off HFP debts listed above, HPI’s offer is contingent on HFP securing a consent from the Board for the assignment of lease from HFP to HPI.

HPI is a produce wholesaler that has been in business in Hilo since 1938. HPI intends to incorporate the subject lease parcel into the processing component of its operations. It is also the intent of HPI to apply for a lease extension under Act 149 once the lease assignment is complete. For additional information, see Assignee Profile Attached as **Exhibit C**.

HFP is currently not compliant with the terms and conditions of subject lease due to the outstanding debts referenced above. Staff is including in the recommendations below a requirement that HFP cure these delinquencies from proceeds of the sale of its business assets. HFP and HPI have established an escrow account to this end.

HPI 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.

RECOMMENDATION:

That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will probably have minimal or no significant effect on the environment and is therefore, exempt from the preparation of an environmental assessment as a de minimis action.
2. Consent to the assignment of General Lease No. S-3716, Hawaiian Fresh Products, Inc., Assignor, to Hilo Products, Inc., as Assignee, subject to the following:
 - a. Within 30 days of execution of consent to assignment of subject lease, HFP shall complete the following requirements, with the understanding that the failure to do so shall result in the automatic nullification of the consent to assignment of lease ab initio:
 - i. HFP shall pay off mortgage loan at Bank of Hawaii of approximately \$305,657.93; and
 - ii. HFP shall pay off back property taxes of approximately \$42,024.34 to the County of Hawaii.
 - b. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time, as may be modified to accommodate the conditions of subparagraph a. above;
 - 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,



gch
Pua Ishibashi
Land Agent

APPROVED FOR SUBMITTAL:



Dawn N.S. Chang, Chairperson

EXHIBIT A

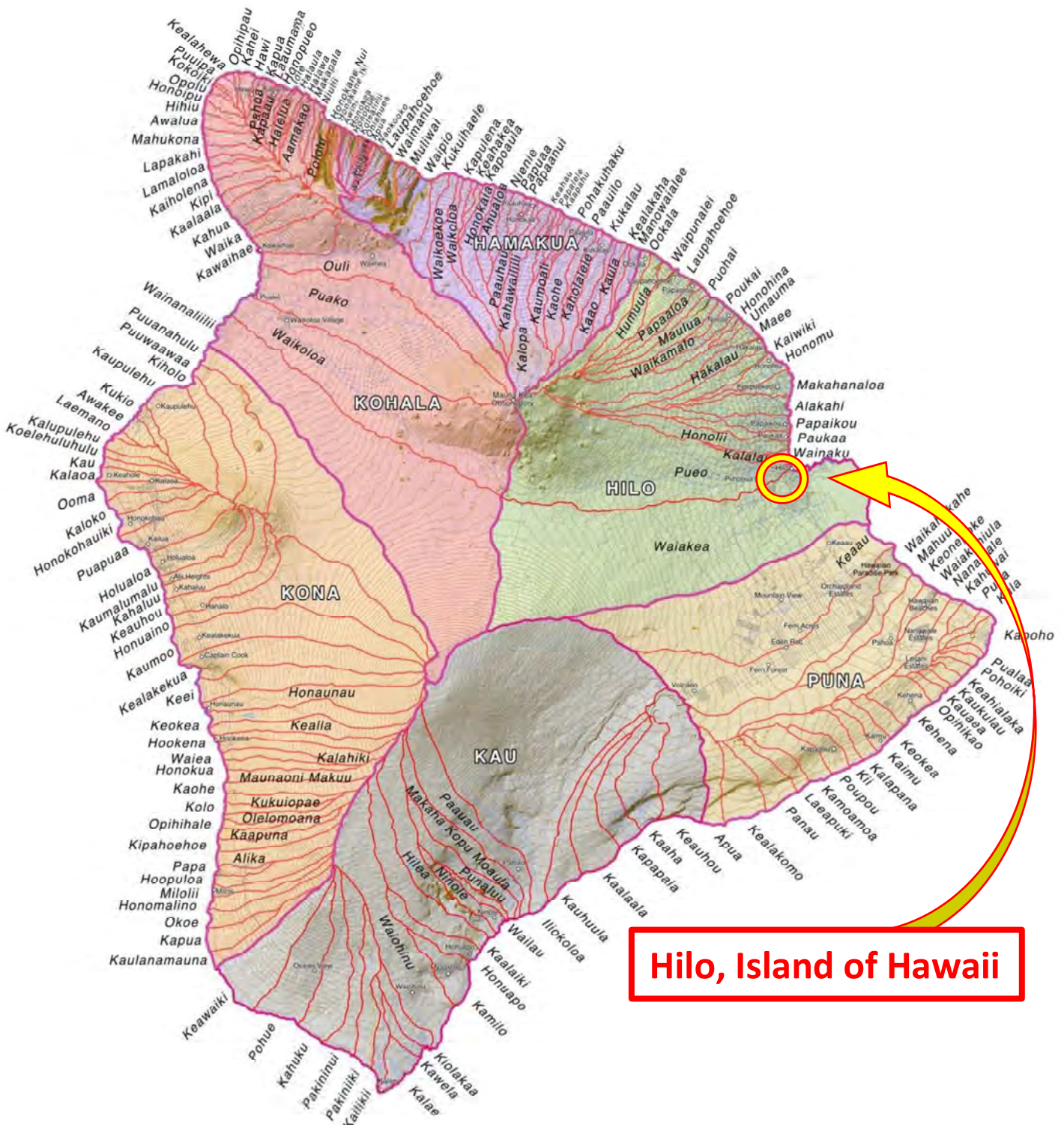
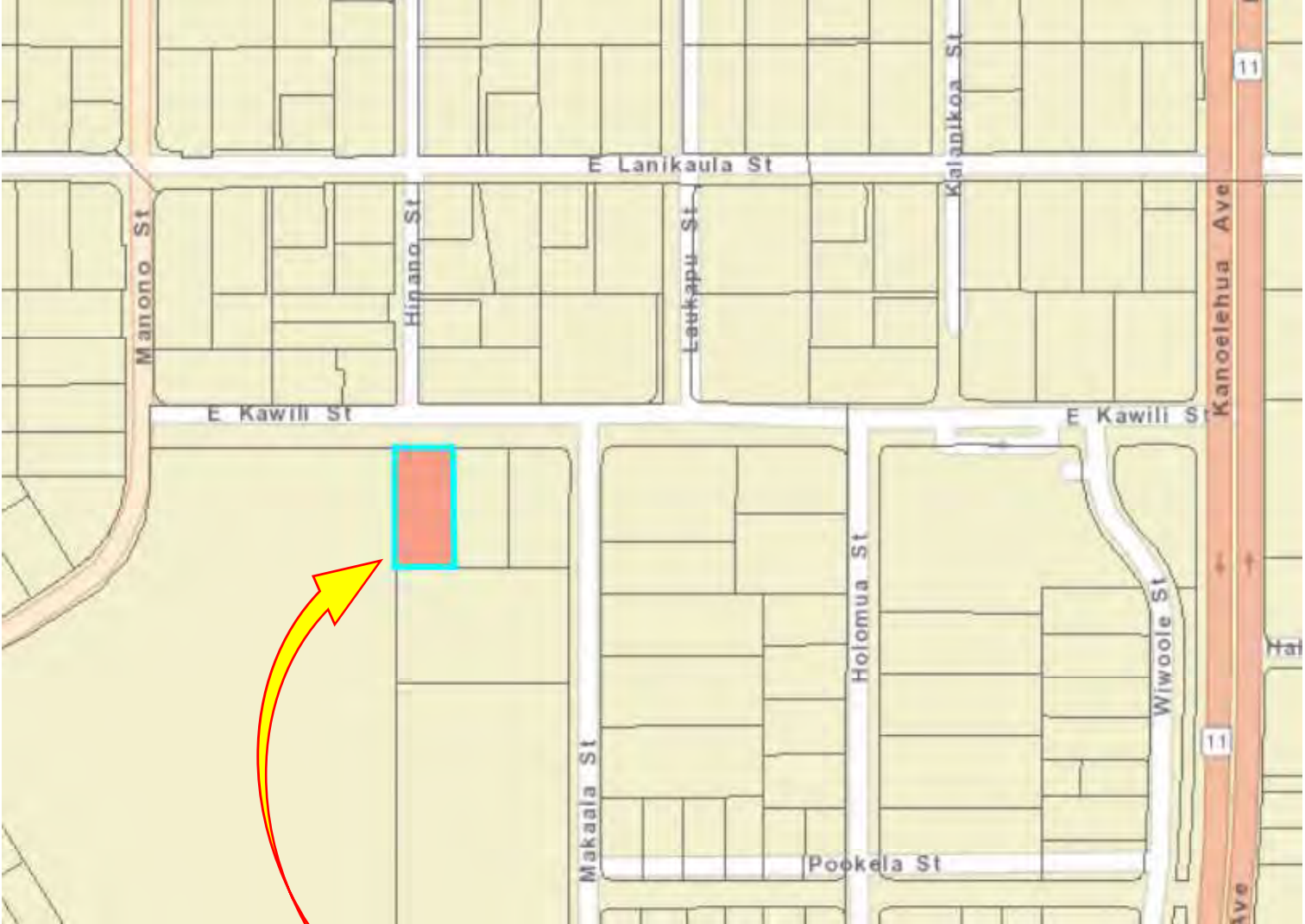
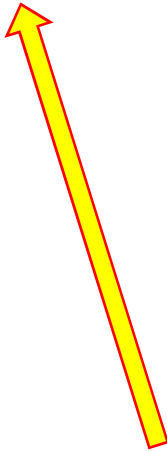
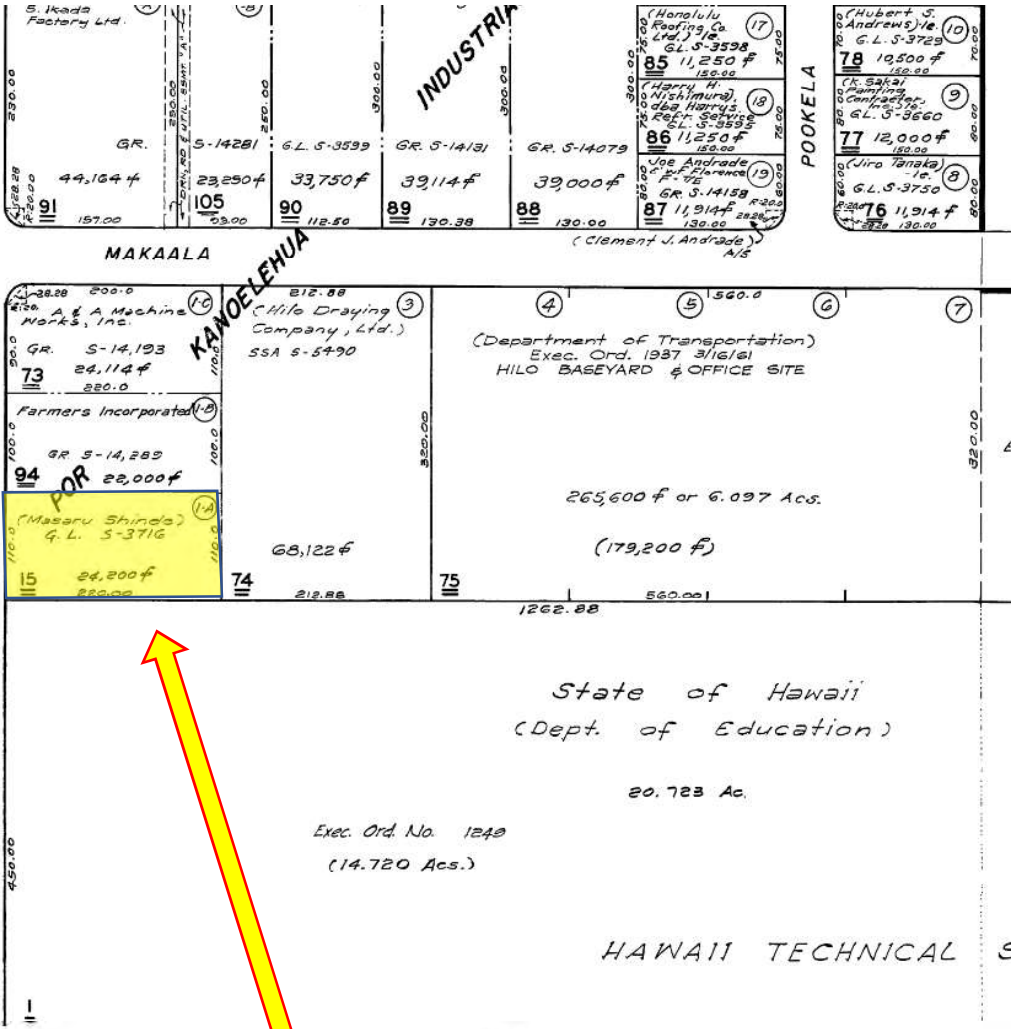
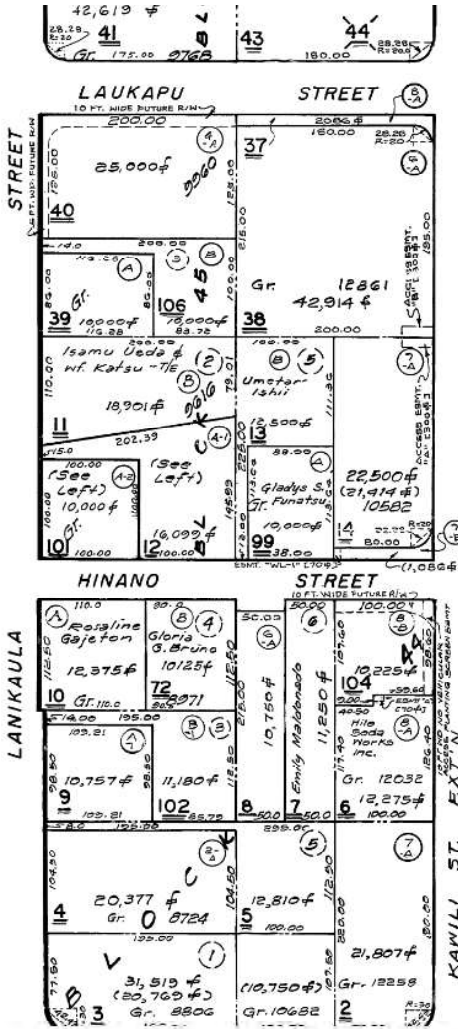


EXHIBIT A



Tax Map Key: (3) 2-2-050:015

EXHIBIT A



Tax Map Key: (3) 2-2-050:015

EXHIBIT A



Subject Property – 270 E. Kawili St. Hilo

Title Guaranty Escrow Services, Inc.

460 Kilauea Ave., Suite 101, Hilo, HI 96720
Phone: (808)935-6638 | Fax: (808)969-6982

EXHIBIT B

ESTIMATED SELLER'S STATEMENT

Settlement Date: March 29, 2024
Disbursement Date: March 29, 2024

Escrow Number: 7322373033
Escrow Officer: Mike Nagai
Email: mnagai@tghawaii.com

Buyer: RCSB SHIPPING, LLC
41 MAKAALA ST
Hilo, HI 96720

Seller: HAWAIIAN FRESH PRODUCTS, INC.
270 E Kawili St , LEASEHOLD
INTEREST
Hilo, HI 96720-5042

Property: 270 E Kawili St , LEASEHOLD INTEREST
Hilo, HI 96720-5042
Tax/Map ID(s): 3220500150000

	\$	DEBITS	\$	CREDITS
FINANCIAL CONSIDERATION				
Sale Price of Property				445,000.00
PRORATIONS/ADJUSTMENTS				
County Taxes/6999.40/6 MOS at \$6,724.41		03/29/24 to 07/01/24 (\$6,724.41 / 180 X 92 days)		3,436.92
STATE OF HAWAII LEASE RENT Monthly at \$2,000.00		03/29/24-04/01/24 (\$2,000.00 / 30 X 2 days)		133.33
TITLE & ESCROW CHARGES				
Title - Escrow Surcharge - Non Real Estate Brokered		Title Guaranty Escrow Services, Inc.	261.78	
Title - Settlement Agent Fee		Title Guaranty Escrow Services, Inc.	1,143.46	
Title - Owner's Title Insurance		Title Guaranty of Hawaii, LLC	1,263.00	
Title - Release Tracking		Title Guaranty of Hawaii, LLC	55.00	
Policies to be issued:				
Owners Policy				
Coverage: \$445,000.00 Premium: \$2,105.00 Version: Hawaii Standard Owner's Policy 2010				
GOVERNMENT CHARGES				
Conveyance Tax (\$667.50)		Registrar of Conveyance	667.50	
PAYOFFS				
Payoff of First Mortgage Loan		Bank of Hawaii	305,697.93	
Principal Balance			301,659.32	
Interest To 02/23/24			4,038.61	
MISCELLANEOUS CHARGES				
Property Taxes		Director of Finance	42,024.34	
2021-1 to 2022-2 TMK:3220500150000 TW PENALTY AND INTEREST TIL 02/29/2024				
MARCH 2024 LEASE RENT EST			2,000.00	

Subtotals	353,113.01	448,570.25
Balance Due TO Seller	95,457.24	
TOTALS	448,570.25	448,570.25

SAVE THIS STATEMENT FOR INCOME TAX PURPOSES

EXHIBIT C

ASSIGNEE PROFILE:

Business: Hilo Products, Inc.

Type: Hawaii Domestic Profit Corporation

Purpose: Produce Wholesaler

Established: 1938, incorporated January 22, 1980

Address: 270 E. Kawili Street, Hilo, Hawaii 96720

President: Brandon Bartolome

Planned Operations: Processing of fruits and vegetables.

Qualifications: Hilo Products has been in the business of fruit and vegetable sales, distribution, and processing since 1938 (nearly 85-years). President Brandon Bartolome has over 30-years in the industry learning the business from the bottom up including 5-years as the President of Hilo Products.

Intentions: Subject property will be used to focus on the processing component of Hilo Products operations.