

**Shall the Authority Authorize the Executive Director to Enter into a
Right of Entry with the University of Hawaii for a Term of 3 Years
for the 135 Ohe Street Parking Lot Located in Kakaako Makai on
TMK (1) -2-1-060:030 (por)?**

Staff Report

May 6, 2015

Background: The University of Hawaii (UH) currently is required to provide three hundred ninety-four (394) parking spaces for Phases 1 and 2 of the JABSOM Project. UH currently has sixty-eight (68) on-site parking stalls and therefore, must provide at least three hundred twenty-six (326) off-site parking stalls to comply with its Development Permit requirements. The UH has a parking agreement with the HCDA to rent at least three hundred twenty-six (326) parking stalls at the Lot C parking lot from 2013 till 2018 at fifty dollars (\$50.00) a month per stall.

JABSOM has an additional need for flexible parking for their UH Manoa professors and students who visit the JABSOM campus, visitors, and non-compensated faculty, who are full-time physicians and periodically instruct at JABSOM. JABSOM is requesting additional flexible parking facilities that can be managed and secured by their security exclusively to support their research and education mission.

The HCDA has provided JABSOM with a right of entry for the 135 Ohe Street parking lot since February 2013 for one thousand dollars (\$1,000.00) per month. The 135 Ohe Street parking lot has forty-five (45) parking stalls and was previously used as regional parking.

JABSOM manages the 135 Ohe Street lot with active sign-in process with a dedicated security guard. Only previously registered guests, UH Manoa faculty and students are allowed to park at the 135 Ohe Street lot and JABSOM does not charge them for its use.

Proposed Course of Action: Staff proposes to enter into a right of entry with UH (attached hereto as Exhibit A) that will include the following terms:

- Three (3) year term; and
- A fixed monthly rent of one-thousand dollars (\$1,000.00).

Recommendation: Staff recommends the Authority authorize the Executive Director to enter into a three (3) year non-exclusive right of entry with UH for use of 135 Ohe Street parking lot located in Kakaako Makai on TMK (1) -2-1-060:030 (por).

Attachment: Exhibit A – Draft Right of Entry

REVOCABLE RIGHT OF ENTRY (ROE 7-14)

By this agreement executed this _____ day of April 2015, the HAWAII COMMUNITY DEVELOPMENT AUTHORITY ("HCDA"), a body corporate and a public instrumentality of the State of Hawaii, hereby grants to UNIVERSITY OF HAWAII, JOHN A. BURNS SCHOOL OF MEDICINE ("UH") (collectively, "Parties") a nonexclusive right of entry upon and subject to the following terms and conditions:

1. **Grant of Right-of-Entry.** HCDA hereby grants to UH and all of its members, employees, officers, directors, representatives, agents, invitees, guests, and independent contractors (collectively, "Permitted Persons") a nonexclusive Right of Entry to enter upon the premises (defined below) for the sole purpose of vehicle parking ("ROE"). UH is responsible for communicating and explaining the terms and conditions of this ROE to all Permitted Persons.

2. **Premises.** This ROE shall pertain to the paved parking lot located at 135 Ohe Street, Honolulu, Hawaii, and identified by Oahu Tax Map Key Nos. (1)-2-1-060: 004 (por) and 006 (por) ("Premises"). The Premises is depicted on the map attached to this ROE as Exhibit "A" and made a part hereof.

3. **Term and Duration.** The term of this ROE granted hereby shall be applicable from 5:00 a.m. on February 25, 2014 ("Commencement Date") through 11:59 p.m. on February 24, 2015 ("Termination Date"). This ROE shall automatically terminate on the Termination Date, unless earlier revoked as provided below. UH agrees to be bound by the terms and conditions of the ROE and any amendments to this ROE.

4. **Use of Premises.** The ROE granted hereby shall be for the sole purpose of vehicle parking of Permitted Persons. UH shall be permitted to gate the driveways and entrances leading to the Premises.

5. **Acknowledgement of Use By Other Persons.** UH acknowledges that other persons or entities have the right to enter and/or use the Premises with the approval of HCDA, and with the exception of parking vehicles, shall not otherwise interfere with their use and enjoyment of the Premises.

6. **Due Care and Diligence.** UH will exercise due care and diligence in entering upon the Premises and will not disrupt or disturb in any way or in any manner whatsoever the activities customary to the operations of HCDA or its agents, and UH shall exercise due care for public safety. At all times during the term of this ROE and upon the termination of this ROE, UH shall be responsible for: (a) removing any debris or trash deposited by Permitted Persons on the Premises; (b) repairing any damage to the Premises caused by its use by Permitted Persons; and (c) restoring the Premises to its original or better than original condition.

7. **Condition of Premises/Assumption of Risk.** UH hereby agrees and acknowledges that HCDA has not made any representation or warranty, implied or otherwise, with respect to the condition of the Premises, including any dangerous or defective conditions

existing in or on the Premises, whether or not such conditions are known to HCDA or reasonably discoverable by UH. UH agrees that all property, approved improvements, and equipment of UH kept or stored on the Premises during the term of this ROE shall be so kept or stored at the sole risk of UH.

8. **Compliance with Laws and Regulations.** UH shall, at all times during the term of this ROE, observe and comply with all applicable laws, rules and regulations, whether County, State or federal, including but not limited to, the laws applicable to the use of the Premises and the securing of any and all necessary governmental and other approvals and permits for use of the Premises.

9. **Prohibited Use.** Any use of the Premises not authorized in Paragraph 4 above shall constitute a material breach of this ROE and upon such breach, HCDA may terminate this ROE forthwith without notice and pursue any other remedies to which HCDA is entitled to by law or under this ROE.

10. **Improvements:** UH shall not construct any improvements of any kind or nature upon the Premises or any other properties of HCDA without HCDA's express prior written consent, which consent may be granted or withheld in HCDA's sole discretion. Any improvements, including but not limited to structures, erected on or moved onto the Premises by UH shall remain the property of UH and UH shall have the right, prior to the termination or revocation of this ROE, or within an additional period HCDA in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the UH shall fail to remove the improvements prior to the termination or revocation of this Permit or within an additional period HCDA may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to UH. This provision shall survive the termination of this ROE.

11. **No Lien.** UH shall not: (a) create, incur, or assume any attachment, judgment, lien, charge, or other encumbrance on the Premises or any improvements thereon; or (b) suffer to exist any such encumbrance other than one created, incurred, or assumed by HCDA.

12. **Non-transferrable.** This ROE or any rights hereunder shall not be sold, assigned, conveyed, or otherwise transferred or disposed of without HCDA's express prior written consent.

13. **Additional Terms and Conditions.** HCDA reserves the right to impose additional terms and conditions, if deemed necessary.

- (a) UH shall pay HCDA a usage fee of \$1,000.00 per month during the term of this ROE, and shall be pro-rated for any partial calendar month. The initial payment shall be made prior to UH's entry of the Premises, and thereafter, payments are due on the 1st day of each month with checks payable to HCDA.
- (b) Animals, plants, rocks, dirt, asphalt and other materials that are on or part of the Premises shall not be harmed or removed from the Premises.

- (c) If UH continues to enter or remain on the Premises after the Termination Date, UH shall pay HCDA as liquidated damages \$500 for each calendar day (or part thereof) that such unlawful entrance and occupation of the Premises continues beyond the Termination Date. Such damages are not a penalty, but rather are reasonable estimates of the losses that HCDA would suffer and that the Parties acknowledge would be difficult to ascertain under the circumstances triggering the damages and are HCDA's exclusive remedy, other than equitable relief (such as an injunction barring UH from entering and remaining on the Premises) or legal relief (in the form of eviction of UH from the Premises or similar legal relief, but not damages) for such entrance or use.
- (d) HCDA reserves the right to impose following additional terms and conditions, if deemed necessary.

14. **Termination.** HCDA may terminate this ROE at any time by notice to UH in accordance with Paragraph 15 below. UH's obligations in Paragraph 6 above shall survive the termination hereof.

15. **Notices.** Any notice, request, demand, or other communication required or permitted to be given or made under this ROE by either party hereto shall be in writing and shall be deemed to have been duly given or served if: (a) personally delivered; (b) sent by mail, postage prepaid and certified with return receipt requested; (c) transmitted by facsimile, or (d) sent by e-mail with request for delivery confirmation, at the address, facsimile number, or e-mail address given below:

Hawaii Community Development Authority
Attention: Anthony Ching, Executive Director
461 Cooke Street
Honolulu, Hawaii 96813
Telephone: (808) 594-0300
Facsimile: (808) 594-0299
E-mail: tony@hcdaweb.org

University of Hawaii, John A. Burns School of Medicine
Attention: Jerris R. Hedges, Dean of John A. Burns School of Medicine
651 Ilalo St., MEB 223J
Honolulu, HI 96813
Telephone: (808) 692-0882
Facsimile: (808) 692-1246
E-mail: Marga@hawaii.edu

16. **Headings/Captions.** The headings and captions of paragraphs or other parts hereof are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which the respective headings and captions may pertain.

17. **Governing Law.** This ROE shall be governed by and construed under the laws of the State of Hawaii.

18. **Counterparts.** This ROE may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.

19. **Entire Agreement.** This ROE constitutes the entire agreement and understanding between the Parties and shall supersede any all prior communications, representations, or agreements, both verbal and written, between the Parties regarding the use of the Premises. This ROE cannot be modified except by a written instrument signed by both Parties.

IN WITNESS WHEREOF, HCDA and UH have caused this ROE to be executed as of the day and year first above written.

Hawaii Community Development Authority

By: _____
Anthony J.H. Ching
Executive Director

University of Hawaii, John A. Burns School of
Medicine

By: _____
Name: Jerris R. Hedges
Title: Dean

APPROVED AS TO FORM:

Deputy Attorney General

**Exhibit A
Location Map
Not to Scale**

TMKs: 2-1-60: por. 004 and por. 006

