

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
KALAELOA
Honolulu, Hawaii, 96813

February 5, 2020

Chairperson and Members
Hawaii Community Development Authority
State of Hawaii
Honolulu, Hawaii

HCDA Board Members:

Shall the Authority Authorize the Executive Director to Amend Right of Entry (ROE) Granted to the Kalaeloa Heritage and Legacy Foundation to Extend the Term of the ROE for an Additional Six Months to Negotiate Appropriate Milestones in Anticipation of the Stewardship Agreement?

SUMMARY:

The Kalaeloa Heritage and Legacy Foundation (KHLF) currently holds a six-month nonexclusive revocable Right of Entry (ROE) for the sole purpose of preserving and maintaining the archaeological, cultural and natural resources in the Kalaeloa Heritage Park.

ROE 7-19, executed on May 17, 2019 and amended November 18, 2019 to extend for an additional six months, terminates on May 17, 2020.

A second extension to ROE 7-19 for an additional six months ("Second Amendment"), will allow KHLF to continue to maintain and protect the Heritage Park and its resources. During this extension period, HCDA and KHLF will negotiate and execute a long-term Stewardship Agreement.

AUTHORITIES:

The Board must approve all Right of Entry (ROE) requests over one year in duration. Since KHLF currently holds a ROE for the subject area, any additional time would push the total term to be longer than one year.

BACKGROUND:

On May 17, 2019, the HCDA granted KHLF a six-month ROE for the sole purpose of preserving and maintaining the archaeological, cultural and natural resources in the Kalaeloa Heritage Park. This ROE required KHLF to produce a site inventory report due by August 2019 to detail all features located at the Heritage Park. This ROE also required KHLF to submit monthly reports detailing all activities at the Park for the previous month.

In August 2019, KHLF submitted its initial site inventory report based on a prior site Environmental Assessment HCDA conducted for the site. HCDA staff requested additional

details beyond what was included in the Environmental Assessment, and KHLF sent a final revised site inventory report in October 2019. To confirm its accuracy, HCDA staff conducted its own site inventory of the Park in November 2019. Several additional sites were located and updated.

On November 18, 2019, ROE 7-19 was amended to add an additional six months to its term (“First Amendment”), as additional time was needed to negotiate a long term Stewardship Agreement with KHLF. ROE 7-19 and its First Amendment are attached hereto as Exhibit A.

HCDA staff and KHLF continued to engage in discussions over the proposed Scope of Work for the Stewardship Agreement. KHLF’s initial proposal is attached hereto as Exhibit B. HCDA staff noted concerns over many of the proposed items, such as the building of semi-permanent structures and HCDA being asked to fund infrastructure upgrades.

After much discussion, KHLF agreed that the Stewardship Agreement would be limited in scope to what is currently allowed under the ROE 7-19. This would enable KHLF to continue managing and maintaining the Heritage Park, while building capacity to eventually request a long-term lease to effectuate its Conceptual Master Plan.

ANALYSIS:

The HCDA recognizes the cultural, historical, and educational activities provided to the public by KHLF at the Heritage Park are valuable to the community and believes strongly in a Stewardship Agreement that would allow such activities to continue.

An extension to ROE 7-19 for an additional six months will allow KHLF to continue stewarding the Heritage Park to ensure historic and cultural sites do not fall into disrepair. This would also allow more time to negotiate the finer details of the long-term Stewardship Agreement.

To ensure the Stewardship Agreement is executed in a timely manner, HCDA staff proposes adding a series of milestones to the current ROE. These milestones will help KHLF prove capacity for undertaking a long-term Stewardship Agreement.

The proposed Second Amendment would require KHLF complete these milestones to the satisfaction of the HCDA prior to the new ROE termination date in November 17, 2020. The HCDA will not entertain further options to extend the current term of the ROE or enter into a new Stewardship Agreement unless these milestones are met. A draft copy of the Second Amendment, including proposed milestones, is attached hereto as Exhibit C.

As previously discussed by the Board, a long-term lease with KHLF may be considered in the future, provided a solid financial plan is developed to provide assurances that all conditions of such a lease could be reasonably accommodated.

Approval of the long-term Stewardship Agreement would be brought before the Board before the ROE’s expiration in November 2020.

RECOMMENDATION:

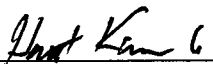
HCDA staff recommends that the Board:

The Authority Authorize the Executive Director to Amend Right of Entry (ROE) Granted to the Kalaeloa Heritage and Legacy Foundation to Extend the Term of the ROE for an Additional Six Months to Negotiate Appropriate Milestones in Anticipation of the Stewardship Agreement?

Respectfully submitted,

Lindsey Doi
Asset Manager

APPROVED FOR SUBMITTAL:



Garrett Kamemoto, Interim Executive Director

Attachments

Exhibit A – Revocable Right of Entry (ROE 7-19) and First Amendment
Exhibit B – KHLF Proposed Scope of Work for Stewardship Agreement
Exhibit C - Draft Second Amendment to Revocable Right of Entry (ROE 7-19) and Milestones

FIRST AMENDMENT TO REVOCABLE RIGHT OF ENTRY (ROE 7-19)

This First Amendment to the Revocable Right of Entry 7-19 (“**First Amendment**”) is executed this 18 day of November 2019, by and between the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY** (“**HCDA**” or “**GRANTOR**”), a body corporate and a public instrumentality of the State of Hawaii, and **KALAELOA HERITAGE AND LEGACY FOUNDATION**, whose business address is P.O. Box 75447, Kapolei, Hawaii, 96707 (“**KHLF**” or “**GRANTEE**”) (HCDA and KHLF are each called a “**Party**” and collectively called “**the Parties**”).

WHEREAS the Parties entered into a Revocable Right of Entry (ROE 7-19) dated May 17, 2019 (hereinafter, the “**ROE**”), a copy of which is attached hereto as Exhibit “**A**”; and

WHEREAS the Parties desire to exercise their mutual option to extend the term of the ROE;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties hereto agree as follows:

1. Section 3 of the ROE is hereby replaced in its entirety as follows:

Term and Duration. The term of this ROE shall commence at 12:00 a.m. on November 18, 2019 and terminate at 11:59 p.m. on May 17, 2020 (“**Termination Date**”). This ROE shall automatically terminate on the Termination Date, unless earlier revoked as provided herein. KHLF agrees to be bound by the terms and conditions of the ROE and any written amendments to this ROE signed by both Parties.

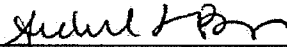
2. This First Amendment, when executed by the Parties, shall be effective as of the date stated above. All understandings and agreements between the Parties with respect to the ROE are merged into, or superseded by, this First Amendment. This First Amendment fully and completely expresses the agreement of the Parties and shall not be modified or amended except by written agreement executed by each of the Parties hereto.

3. The First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.


4. Except as amended and/or modified by this First Amendment, all other terms and provisions of the ROE shall remain in full force and effect, unaltered and unchanged by this First Amendment. Whether or not specifically amended by this First Amendment, all of the terms and provisions of the ROE are hereby amended to the extent necessary to give effect to the purpose and intent of this First Amendment.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed as of the day and year first above written.

**HAWAII COMMUNITY
DEVELOPMENT AUTHORITY**

By: 
Aedward Los Banos
Executive Director and CEO

**KALAELOA HERITAGE AND
LEGACY FOUNDATION**

By: 
Name: DWIGHT VICTOR
Title: PRESIDENT KHLF

APPROVED AS TO FORM:

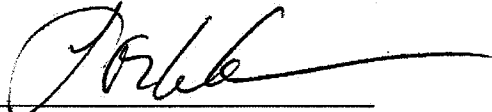

Deputy Attorney General

Exhibit A

REVOCABLE RIGHT OF ENTRY (ROE 7-19)

By this NONEXCLUSIVE REVOCABLE RIGHT OF ENTRY AGREEMENT (the "ROE") made and executed this MOU day of 17th 2019, the HAWAII COMMUNITY DEVELOPMENT AUTHORITY ("HCDA" or "GRANTOR"), a body corporate and a public instrumentality of the State of Hawaii, hereby grants to KALAELOA HERITAGE AND LEGACY FOUNDATION (hereafter referred to as "KHLF" or "GRANTEE") whose business address is P.O. Box 75447, Kapolei, Hawaii, 967073, a nonexclusive revocable Right of Entry upon the Premises (as defined below) subject to each of the following terms and conditions:

1. **Grant of Right-of-Entry.** The HCDA hereby grants to KHLF and all of its members, employees, officers, directors, representatives, invitees, and other guests and participants in KHLF's programs (collectively, "Permitted Persons") a nonexclusive revocable ROE to enter upon the Premises (as defined below) for the sole purpose of preserving and maintaining the archaeological, cultural and natural resources in the Kalaeloa Heritage Park as described in paragraph 4 below. KHLF is responsible for communicating and explaining the terms and conditions of this ROE to all Permitted Persons and ensuring compliance by Permitted Persons with such terms and conditions.

2. **Premises.** This ROE shall pertain to that approximately 11.501-acre parcel of that certain real property identified as Parcel No. 13073 D located in Kalaeloa, Hawaii and identified by Oahu Tax Map Key No. 9-1-013:069 and depicted on the map attached Exhibit "A," which is incorporated herein by reference. Any question or conflict regarding the boundary of the Premises shall be unilaterally resolved by GRANTOR.

3. **Term and Duration.** The term of this ROE shall commence at 12:00 a.m. May 18, 2019 and terminate at 11:59 p.m. on November 17, 2019 ("Termination Date"), subject to a six (6) month extension option. This ROE shall automatically terminate on the Termination Date, unless earlier revoked as provided herein or an extension option is mutually agreed upon. KHLF agrees to be bound by the terms and conditions of the ROE and any written amendments to this ROE signed by both Parties.

4. **Use of Premises.** This ROE is nonexclusive. The ROE granted hereby shall be the sole purpose of preserving and maintaining of archaeological, cultural and natural resources located on the Premises, performed by Permitted Persons. KHLF shall work cooperatively with HCDA. Except for securing the Premises to protect against theft and vandalism, KHLF shall not alter, obstruct or impede any driveways, entrances, exits or other points of ingress or egress leading to the Premises. Vehicles obstructing ingress and egress, including impeding driveways, entrances and exits, will be subject to removal by towing at KHLF's sole expense.

5. **Acknowledgement of Use By Other Persons.** KHLF acknowledges that other persons or entities have the right to enter and/or use the Premises with the approval of the HCDA, and with the exception of the uses specified in Paragraph 4 above, KHLF

shall not otherwise interfere with or impair the use and enjoyment of the Premises by such other persons or entities. KHLF shall allow the HCDA or other persons approved by the HCDA to access the Premises.

6. **Due Care and Diligence.** At all times during the term of this ROE, KHLF shall exercise diligence and due care for public safety in entering upon the Premises and shall not unreasonably disrupt or disturb in any way or manner whatsoever the activities or operations of the HCDA, the HCDA's agents on the Premises, or other persons or entities who have the right to enter and/or use the Premises with the approval of the HCDA. At all times during the term of this ROE and upon the termination of this ROE, KHLF 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 KHLF's use or the use by any Permitted Persons; and (c) restoring the Premises to its original condition or better than the original condition Premises was in at the time of KHLF's entry onto the Premises under this ROE. This provision shall survive the automatic expiration date or earlier termination of this ROE.

7. **Indemnity.** KHLF shall defend, indemnify and hold harmless the HCDA and the State of Hawaii, and their respective officials, directors, members, employees, and agents from and against any and all claims, actions, penalties, damages, liabilities, costs and expenses for loss or damage, including property damage, personal injury and wrongful death, based upon or arising out of or in connection with: (a) KHLF's breach of this ROE; (b) a Permitted Person's tortious conduct or violation of law on or upon the Premises; (c) any injury sustained or suffered by a Permitted Person while on the Premises; and (d) any other act or omission in any way relating to or arising out of this ROE (collectively, "**Covered Claims**"). KHLF shall also reimburse HCDA for all costs and expenses, including but not limited to reasonable attorney's fees incurred by HCDA in connection with HCDA's defense of any Covered Claims. This provision shall survive the automatic expirations date or earlier termination of this ROE.

8. **Insurance.** (a) KHLF shall obtain and maintain at all times, at its own expense, insurance coverage of the kinds and in amounts greater than or equal to those set forth below:

Commercial General Liability:

\$1,000,000 per occurrence and \$2,000,000 in the aggregate

\$1,000,000 Completed Operations Aggregate Limit

\$1,000,000 Each Occurrence Limit

\$1,000,000 Personal & Advertising Limit

Umbrella Liability: \$2,000,000 Aggregate (optional, if other limits cannot be met)

Worker's Compensation:

Coverage A: As required by Hawaii Laws

Coverage B: Employer's Liability:
\$100,000 Bodily Injury by Accident Each Accident
\$100,000 Bodily Injury by Disease
\$500,000 Policy Limit and \$500,000 Each
Employee

Automobile: \$2,000,000 combined single limit OR \$1,000,000
bodily injury per person, \$1,000,000 bodily
injury per accident, and \$1,000,000 property
damage per damage

- (b) Prior to KHLF's first entry onto the Premises, KHLF shall provide to the HCDA a copy of the above referenced required insurance policies to evidence KHLF's compliance with the insurance requirements set forth in subsection (a) above.
- (c) The insurance policies obtained by KHLF in accordance with subsection (a) above shall name the Hawaii Community Development Authority and the State of Hawaii and their respective officials, directors, officers, members, employees and agents as additional insureds.
- (d) The HCDA shall be notified at least 15 days prior to the termination, cancellation or any material change in KHLF's insurance coverage.
- (e) KHLF shall cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of KHLF or Permitted Persons in connection with KHLF's use or occupancy of the Premises.
- (f) The procuring of such required policy or policies of insurance shall not be construed to limit KHLF's liability under this ROE or to fulfill the indemnification provisions and requirements of this ROE. Notwithstanding said policy or policies of insurance, KHLF shall be obligated for the full and total amount of any damage, injury, or loss caused by the negligence or neglect of KHLF or the Permitted Persons connected with this ROE.
- (g) KHLF shall keep such insurance in effect and the certificate(s) on deposit with the HCDA during the entire term of this ROE. Upon request by the HCDA, KHLF shall furnish a copy of the policy or policies.
- (h) Failure of KHLF to provide and keep in force such insurance shall be regarded as a material default under this ROE and the HCDA shall be entitled to exercise any or all of the remedies provided in this ROE for default of KHLF.

- (i) The HCDA is a self-insured State agency. KHLF's insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of, and shall not contribute with insurance provided by KHLF.
- (j) KHLF shall ensure that written waivers are signed by all volunteers working on the Premises, prior to the volunteers' first entry onto the Premises. KHLF shall ensure that these written waivers contain language releasing the State of Hawaii and the HCDA from any and all liability. KHLF shall keep these written waivers on file and provide a copy of all such waivers to the HCDA.

The HCDA reserves the right to inspect and review all coverage, form, and amount of the insurance required by the above. If, in the HCDA's discretion, the above insurance does not provide adequate protection for the HCDA, it may require KHLF to obtain insurance sufficient in coverage, form, and amount to provide such adequate protection.

9. **Condition of Premises/Assumption of Risk**. KHLF 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 KHLF. KHLF agrees that HCDA shall not be held responsible for any injury or damage to KHLF or Permitted Persons due to the presence of hazardous materials on or in the Premises. KHLF further agrees that all property, approved improvements, and equipment of KHLF kept or stored on the Premises during the term of this ROE shall be so kept or stored at the sole risk of KHLF. This provision shall survive the automatic expiration date or earlier termination of the ROE.

10. **Compliance with Laws and Regulations**. KHLF 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 its use of the Premises, including, but not limited to, compliance with Hawaii Revised Statutes (HRS) Chapter 6E and HRS Chapter 269E.

11. **No Hazardous Materials**. KHLF shall not cause nor permit the escape, disposal or release of any hazardous materials except as permitted by law. KHLF shall not allow the handling, storage or use of such materials, nor allow to be brought onto the Premises any such materials, except with the prior written consent of the HCDA. If any governmental agency should require testing to ascertain whether or not there has been any release of hazardous materials by KHLF, then KHLF shall be responsible for the reasonable costs thereof. In addition, KHLF shall execute affidavits, and other documents from time to time at the HCDA's request concerning KHLF's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released thereon by KHLF.

For the purpose of this ROE "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

12. **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, the HCDA may terminate this ROE forthwith without notice and pursue any other remedies to which the HCDA is entitled to by law or under this ROE, provided that the HCDA shall first give KHLF notice of the breach and afford KHLF forty-eight (48) hours to cure such breach.

13. **Improvements.** KHLF shall not construct any improvements of any kind or nature upon the Premises or any other properties of HCDA without the HCDA's express prior written consent, which consent may be granted or withheld in the HCDA's sole discretion. Any improvements, including but not limited to structures, erected on or moved onto the Premises by KHLF shall remain the property of KHLF and KHLF shall have the right, prior to the termination or revocation of this ROE, or within an additional period the HCDA in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event KHLF shall fail to remove the improvements prior to the termination or revocation of this ROE or within an additional period, the 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 KHLF. This provision shall survive the automatic expiration date or earlier termination of this ROE.

14. **No Lien.** KHLF 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 the HCDA.

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

16. **Additional Terms and Conditions.**

- (a) No one may reside on the Premises, and the Premises may not be accessed for any other purpose except as authorized herein.
- (b) Animals, plants, rocks, dirt and other materials that are on or part of the Premises shall not be harmed or removed from the Premises with the exception of the removal of invasive species to provide for the restoration and maintenance of the Premises.

- (c) All work on the site shall be subject to the rights of native Hawaiians and to regulatory rights and ownership rights of the State of Hawaii established pursuant to state law, including Hawaii Revised Statutes Chapter 6E (Historic Preservation), over prehistoric or historic remains found in, on, or under the Premises.
- (d) If KHLF continues to enter or remain on the Premises after the Termination Date, KHLF shall pay the HCDA as liquidated damages \$200 for each calendar day (or part thereof) that such unlawful entrance and occupation of the Premises continues beyond the Termination Date.
- (e) No later than three months after the execution of this ROE, KHLF shall create an inventory list and map of all site features and improvements on the Premises from the date when KHLF first entered the Premises in late 2015.
- (f) KHLF shall submit monthly reports to the HCDA providing HCDA with: (i) site features, (ii) an updated site improvement inventory, (iii) an updated summary of all activities on the Premises, no later than the 15th of each month for the preceding month.
- (g) Commercial activity on the Premises shall not be permissible without prior written authorization from the HCDA. All revenue generated by commercial activity shall be detailed in the monthly report to the HCDA.
- (h) The HCDA reserves the right to impose additional terms and conditions it deems reasonably necessary.

17. **Termination.** Either Party may terminate this ROE at any time with at least 30 days written notice in accordance with Paragraph 18 below.

18. **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 provided below:

Hawaii Community Development Authority
Attention: Aedward Los Banos, Executive Director
547 Queen Street
Honolulu, Hawaii 96813
Telephone: (808) 594-0300
Fax: (808) 587-0299
Email: dbedt.hcda.contact@hawaii.gov

Kalaeloa Heritage and Legacy Foundation
Attention: Dwight Victor, President
P. O. Box 75447
Kapolei, Hawaii 96707
Telephone: (808) 282-3921
E-mail: dvictor@khlfoundation.org

19. **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.

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

21. **Representation on Authority of Parties/Signatories.** Each person signing this agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this agreement. Each party represents and warrants to the other that the execution and delivery of the agreement and the performance of such party's obligations hereunder have been duly authorized and that the agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

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

23. **Entire Agreement.** This ROE constitutes the entire Agreement and understanding between the Parties and shall supersede any and 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.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

**HAWAII COMMUNITY
DEVELOPMENT AUTHORITY**

By: Aedward Los Banos
Aedward Los Banos
Executive Director

**KALAELOA HERITAGE AND
LEGACY FOUNDATION**

By: _____
Name
Title

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General

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

**HAWAII COMMUNITY
DEVELOPMENT AUTHORITY**

By: _____
Aedward Los Banos
Executive Director

**KALAELOA HERITAGE AND
LEGACY FOUNDATION**

By: Valerie M. Kane
Name
Title *Secretary*

APPROVED AS TO FORM:

Deputy Attorney General

Exhibit A





Stewardship Agreement Scope of Work

As requested, here are the Use of Premises/Scope of Work envisioned by KHLF for the planned Stewardship Agreement. Items listed are in no particular order.

EDUCATION:

1. Docent led or self-guided site tours for both educational and commercial purposes
2. Educational and/or experiential learning activities
 - a. Includes public/private school programs as well as KHLF led programs
3. Cultural workshops – such as feather work, place names, etc.
 - a. Open to the general public or limited in scope (by invitation only)
 - b. Workshops may be performed by KHLF subcontractors or vendors
 - c. There may be a charge for vendors and/or participants to help defray operational costs
4. Community service workdays, service work opportunities, or other work study opportunities

MAINTENANCE/UPKEEP:

1. Continued use of the free-range animals (i.e., chickens, peacocks, etc.) that spontaneously arrived at the Park for pest control purposes
2. Installation and maintenance of irrigation systems and/or any other equipment required to uphold Park maintenance and appearance
3. Storage and use of equipment required for the continued maintenance and upkeep of the Park (i.e., water totes/truck, storage containers, wood chippers, equipment trailers, hand tools, power tools, etc.)
4. Build and use of temporary and/or semi-permanent structures:
 - a. Such as the current kauhale and canopies
 - b. Also includes structures such as wooden walkways over existing paths, additional hale/canopies to allow visitors to rest
 - c. Restrooms and/or porta-potties, etc.
5. Hire and utilization of outside vendors and/or subcontractors (i.e., landscapers, architects, archaeologists, etc.)
6. Use of the portion of the maintenance yard within the boundaries of the TMK
 - a. Vehicle parking for events and/or site tours
 - b. School bus turnaround and/or parking
 - c. KHLF events (i.e., lū'au fundraiser, makahiki, etc.)

INCOME GENERATION:

1. KHLF fundraisers, such as lū'au or other events on site
 - a. Primarily within the area of the maintenance yard within the boundaries of the TMK
 - b. May include the "interpretive" area of the TMK



KALAELOA HERITAGE AND LEGACY FOUNDATION

P.O. Box 75447 Kapolei, HI 96707

2. Sales of products developed from materials readily available at the Park (i.e., kiawe wood, native plants and seeds, craft items, etc.) or related goods/services
3. Sales of refreshments, crafts, gifts, and souvenirs in a gift-shop type environment
4. Photo shoots and or videography

WORK REQUIRING PARTNERS:

1. Reforestation, replanting, and preservation of native plants
2. Archaeology or anthropology research
 - a. We are currently working with UHWO School of Anthropology to define a partnership
3. Refurbishment and restoration of cultural, historical, and archaeological features
4. Removal of invasive or non-endemic/non-indigenous species
5. Release and reintroduction of native animal species (e.g., pueo, etc.)

THINGS WE NEED HCDA ASSISTANCE WITH:

1. Installation of utilities (i.e., water, sewer, electricity, etc.)
2. Physical street address
3. Road improvements
4. Any/all necessary permits or permissions to facilitate any previously mentioned activity

Please let me know if you have any questions. Copies of this report will be delivered via both email and postal mail.

Mahalo,

Dwight Victor
President

SECOND AMENDMENT TO REVOCABLE RIGHT OF ENTRY (ROE 7-19)

This Second Amendment to the Revocable Right of Entry 7-19 (“**Second Amendment**”) is executed this _____ day of _____, 2020, by and between the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY (“HCDA”** or “**GRANTOR**”), a body corporate and a public instrumentality of the State of Hawaii, and **KALAELOA HERITAGE AND LEGACY FOUNDATION**, whose business address is P.O. Box 75447, Kapolei, Hawaii, 96707 (“**KHLF**” or “**GRANTEE**”) (HCDA and KHLF are each called a “**Party**” and collectively called “**the Parties**”).

WHEREAS the Parties entered into a Revocable Right of Entry (ROE 7-19) dated May 17, 2019 (hereinafter, the “**ROE**”);

WHEREAS an amendment to extend the term of the ROE (“**First Amendment**”) was executed on November 18, 2019, a copy of which is attached hereto as Exhibit “B”; and

WHEREAS the Parties desire to exercise their mutual option to further extend the term of the ROE for an additional six months;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties hereto agree as follows:

1. Section 3 of the ROE is hereby replaced in its entirety as follows:

Term and Duration. The term of this ROE shall commence at 12:00 a.m. on May 18, 2020 and terminate at 11:59 p.m. on November 17, 2020 (“**Termination Date**”). This ROE shall automatically terminate on the Termination Date, unless earlier revoked as provided herein. KHLF agrees to be bound by the terms and conditions of the ROE and any written amendments to this ROE signed by both Parties.

2. This Second Amendment requires that the KHLF complete milestones, as depicted in Exhibit “C,” to the satisfaction of the HCDA prior to the Termination Date. The HCDA will not entertain further options to extend the current term of this ROE or enter into a new Stewardship Agreement unless these milestones are met prior to the Termination Date.

3. This Second Amendment, when executed by the Parties, shall be effective as of the date stated above. All understandings and agreements between the Parties with respect to the ROE are merged into, or superseded by, this Second Amendment. This Second Amendment fully and completely expresses the agreement of the Parties and shall not be modified or amended except by written agreement executed by each of the Parties hereto.

4. The Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

5. Except as amended and/or modified by this Second Amendment, all other terms and provisions of the ROE shall remain in full force and effect, unaltered and unchanged by this Second Amendment. Whether or not specifically amended by this Second Amendment, all of the terms and provisions of the ROE are hereby amended to the extent necessary to give effect to the purpose and intent of this Second Amendment.

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to be executed as of the day and year first above written.

**HAWAII COMMUNITY
DEVELOPMENT AUTHORITY**

By: _____
Garett Kamemoto
Interim Executive Director and CEO

**KALAELOA HERITAGE AND
LEGACY FOUNDATION**

By: _____
Name:
Title:

APPROVED AS TO FORM:

Deputy Attorney General

Milestones

These milestones are part of the Second Amendment to the Revocable Right of Entry 7-19 (hereinafter “ROE”) by and between the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY (“HCDA”)** and **KALAELOA HERITAGE AND LEGACY FOUNDATION (“KHLF”)**.

The Second Amendment requires that the KHLF complete milestones to the satisfaction of the HCDA prior to its Termination Date as follows:

- Milestone 1: Work with HCDA to finalize a Stewardship Agreement.
- Milestone 2: Develop a management plan stipulating how the population of free-range animals (i.e., chickens, peacocks, etc.) is being managed to ensure the premises is not overrun
- Milestone 3: Keep monthly site inventory updated at all times, including all large equipment brought on premises (i.e., water totes/truck, storage containers, wood chippers, equipment trailers, etc.)
- Milestone 4: Stripe/demarcate parking and events area within maintenance yard to ensure all use remains within the TMK boundary of the ROE premises
- Milestone 5: List cultural, historical, and archaeological site/features to be refurbished/restored, if any, and detail how they will be restored
- Milestone 6: List any new native animal or plant species (e.g., pueo, etc.) for reintroduction
- Milestone 7: Provide HCDA with a list of available grants KHLF is pursuing to help fund maintenance activities on site
- Milestone 8: Provide any copies of existing building permits or correspondence for all existing structures on premises