

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

August 5, 2020

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

HCDA Board Members:

**SUBJECT:** Shall the Authority Authorize the Interim Executive Director to Amend the Existing Right of Entry Agreement with Kupu Executed on August 9, 2010 for the Use of a Portion of Oahu Tax Map Key 1-2-001-058: 135 at Kewalo Basin Harbor for the Purposes of Parking and Utility Storage (ROE 1-19) to Extend the Term for an Additional Two Years Until September 30, 2022?

**SUMMARY:**

Kupu has a continued need for additional storage space, parking, and a propane tank to support its activities at the Net Shed at Kewalo Basin Harbor. Kupu currently holds a one-year Right of Entry (ROE) to utilize a portion of the adjacent NOAA Lot, which is currently pending lease and development by the Howard Hughes Corporation (HHC). Kupu requests an additional two-year extension, as current market conditions related to COVID-19 have delayed both Kupu's and Howard Hughes' plans for developing the lot.

**AUTHORITIES:**

The Board must approve all ROE requests covering over a year in duration.

**BACKGROUND:**

On November 1, 2017, the Hawaii Community Development Authority (HCDA) executed a 15-year lease with Kupu to redevelop and construct an educational, cultural, and community center at HCDA's Net Shed at Kewalo Basin Harbor. The facility broke ground on April 5, 2018, and the Harry and Jeanette Weinberg Hookupu Center formally opened to the public on March 14, 2019. Kupu's lease subsequently transferred to the City & County of Honolulu (City) upon HCDA's conveyance of the Kakaako Makai Park Properties.

On August 9, 2019, the HCDA granted Kupu a one-year ROE (ROE 1-19) for a portion of the property commonly identified as the NOAA Lot at Kewalo Basin Harbor. This ROE is attached hereto as Exhibit A. Unlike Kewalo Basin Park and Net Shed, the NOAA Lot property was not transferred to the City, so ROE 1-19 remains under the jurisdiction of the HCDA. ROE 1-19 allows Kupu to utilize a portion of NOAA Lot to park staff vehicles, store tools/ equipment/ supplies, and house utilities necessary for Kupu's business operations at the adjacent Net Shed.

One of the items included under this ROE was the installation and maintenance of a 499-gallon propane gas tank.

The propane gas tank is necessary for Kupu to operate the commercial kitchen on its leased premises at Net Shed. The propane tank was previously planned to be situated within Kupu's leased premises on the harbor channel side of the Net Shed, however, the refueling truck could not access the tank in that location. Due to these issues, HCDA's previous Planning Director and previous Executive Director allowed the propane tank to be relocated to HCDA's NOAA Lot under a short-term ROE.

When requesting ROE 1-19 last year, Kupu indicated that parking and utility storage are actually long term needs that Kupu must secure for the duration of their 15-year lease, plus the two potential 10-year extension options. Given that Kupu's leased premises at Net Shed is unable to accommodate such parking and utility storage, alternate solutions are being explored with HHC at the adjacent NOAA Lot site.

The NOAA Lot is currently slated for development after the HCDA issued a Request for Proposals (RFP) and made an award to HHC in December 2015. The HCDA executed a Development Agreement with HHC on March 14, 2017. Since then, HHC has been conducting its due diligence and performing an Environmental Assessment (EA). The draft lease has been pending review by HHC's legal team for several years.

Although HHC originally expected to complete the EA in the spring of 2020, COVID-19 caused numerous delays and restructuring of their priorities. As such, it is now unclear when HHC will be able to proceed with plans to redevelop NOAA Lot. Similarly, Kupu also faces challenges due to COVID-19 and the cancelation of Kupu's fundraising events.

#### **ANALYSIS:**

Given the pending lease of the NOAA Lot to HHC, the HCDA cannot enter into any long-term encumbrances for that parcel. Kupu is aware that any ROE for the NOAA Lot will be terminated with at least 30 days written notice once the lease with HHC is executed.

Kupu has engaged in talks with HHC to potentially sublease the NOAA Lot premises from HHC. Both HHC and Kupu believe this could be a mutually beneficial agreement that would still enable HCDA to collect the rent due under the HHC master lease.

Kupu requests amending ROE 1-19 to include a two-year extension that would allow both parties time to reach a long-term agreement that satisfies both their needs. The draft proposed amendment is attached hereto as Exhibit B. Kupu agrees to continue paying \$1,232.50 in monthly rent to HCDA for the duration of the ROE extension period. Given the pending execution of a lease with HHC, the HCDA would otherwise be unable to rent the NOAA Lot site and collect any revenue.

**RECOMMENDATION:**

HCDA staff recommends that the Board:

Authorize the Interim Executive Director to Amend the Existing Right of Entry Agreement with Kupu, Executed on August 9, 2010 for the Use of a Portion of Oahu Tax Map Key 1-2-001-058: 135 at Kewalo Basin Harbor for the Purposes of Parking and Utility Storage (ROE 1-19) to Extend the Term for an Additional Two Years Until September 30, 2022?

Respectfully submitted,



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Lindsey Doi  
Asset Manager

APPROVED FOR SUBMITTAL:



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Garrett Kamemoto, Interim Executive Director

Attachments

Exhibit A – Kupu ROE 1-19

Exhibit B – DRAFT First Amendment to ROE 1-19



REVOCABLE RIGHT OF ENTRY (ROE 1-19)

By this NONEXCLUSIVE REVOCABLE RIGHT OF ENTRY AGREEMENT (“ROE”) made and executed this 9 day of AUGUST 2019, the HAWAII COMMUNITY DEVELOPMENT AUTHORITY (“HCDA” or “GRANTOR”), a body corporate and a public instrumentality of the State of Hawaii, hereby grants to KUPU whose business address is 677 Ala Moana Boulevard, Suite 1200, Honolulu, Hawaii 96813 (“KUPU” or “GRANTEE”), a nonexclusive right of entry upon and use of 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 GRANTEE and all of its members, employees, officers, directors, representatives, agents, invitees, guests, and independent contractors (collectively, “Permitted Persons”) an ROE to enter upon the Premises (as defined below) for the sole purposes set forth herein. GRANTEE 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 5,700 square feet portion of that certain real property commonly known as the NOAA Lot located at 1125 Ala Moana Boulevard Honolulu HI 96814 and identified by Oahu Tax Map Key No. 1-2-1-58:135 por. and outlined in blue in the attached Exhibit “A.” Any question or conflict regarding the boundary of the Premises shall be unilaterally resolved by GRANTOR.

3. **Term.** The term of this ROE shall commence at 12:00 a.m. October 1, 2019 and terminate at 11:59 p.m. on September 30, 2020. This ROE shall automatically terminate on the Termination Date, unless earlier revoked as provided herein. GRANTEE 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 for the purpose of parking vehicles in the stalls demarcated in Exhibit A; housing storage containers in the location indicated in Exhibit A for the purpose of storing hand tools, equipment, and supplies in connection with GRANTEE’s business operations; and housing a 499-gallon propane gas tank and trash/ waste receptacles in the enclosure area indicated in Exhibit A. GRANTEE shall not alter, obstruct or impede any driveways, entrances, exits or other points of ingress or egress leading to the Premises. Vehicles parked in non-designated spaces for any reason, or otherwise obstructing ingress and egress, including impeding driveways, entrances and exits, will be subject to removal by towing at GRANTEE’s sole expense.

5. **Acknowledgement of Use By Other Persons.** GRANTEE 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 herein, GRANTEE

shall not unreasonably interfere with or impair the use and enjoyment of the Premises by such other persons or entities.

6. **Due Care and Diligence.** GRANTEE shall exercise diligence and due care for public safety in entering upon the Premises and shall not unreasonably disrupt or disturb the activities customary to the operations of the HCDA or its 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, GRANTEE shall be responsible for: (a) removing any debris or trash deposited on the Premises; (b) repairing any damage to the Premises caused by its actions or the actions of third-persons due to GRANTEE's actions or inactions in securing the Premises; and (c) restoring the Premises to substantially the same condition it was in at the time of GRANTEE's entry onto the Premises, normal wear and tear excepted. This provision shall survive the termination of this ROE.

7. **Release and Waiver by GRANTEE.** GRANTEE expressly acknowledges and agrees that GRANTOR assumes no responsibility for any damages to person or property arising out of this ROE. Any items left on the Premises, whether owned and/or operated by GRANTEE or Permitted Persons, are at the sole risk of the GRANTEE. GRANTEE expressly agrees that GRANTOR shall not be responsible for any loss or damage to any persons or property, including but not limited to collision, fire, vandalism, theft or any other cause, nor for loss, damage or injury by or to other Permitted Persons or any other individual.

8. **Indemnity.** GRANTEE shall defend, indemnify and hold harmless the HCDA and the State of Hawaii, and its respective officials, directors, members, employees, and agents (collectively the **Indemnified Parties**) 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) GRANTEE's breach of this ROE; (b) any 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 GRANTEE's entry and use of the Premises under this ROE (collectively, **Covered Claims**). GRANTEE shall also reimburse the Indemnified Parties for all costs and expenses, including reasonable attorney's fees, incurred in connection with the Indemnified Parties defense of any Covered Claims. This provision shall survive the termination of this ROE. Notwithstanding anything to the contrary herein, GRANTEE shall not be liable for indemnifying the Indemnified Parties with respect to claims, actions, penalties, damages, liabilities, costs or expenses to the extent they are caused by the negligence or willful misconduct of any such Indemnified Parties.

9. **Insurance.** (a) GRANTEE shall obtain and maintain at all times during the term of this ROE, 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 met)

**Worker's Compensation:**

Coverage A: As required by Hawaii Laws  
Coverage B: Employer's Liability:  
\$1,000,000 Bodily Injury by Accident Each Accident  
\$1,000,000 Bodily Injury by Disease  
\$1,000,000 Policy Limit and \$1,000,000 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 GRANTEE's first entry onto the Premises, GRANTEE shall provide to the HCDA a certificate of insurance to evidence compliance with the insurance requirements set forth in subsection (a) above.
- (c) The insurance policies obtained by GRANTEE 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 GRANTEE's insurance coverage.
- (e) GRANTEE shall cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of GRANTEE or Permitted Persons in connection with GRANTEE's use or occupancy of the Premises.
- (f) The procuring of such required policy or policies of insurance shall not be construed to limit GRANTEE's liability under this ROE or to fulfill the indemnification provisions and requirements of this ROE. Notwithstanding said policy or policies of insurance, GRANTEE shall be obligated for the full and total amount of any damage, injury, or loss

caused by the negligence or neglect of GRANTEE or the Permitted Persons connected with this ROE.

- (g) GRANTEE shall keep such insurance in effect and the certificate(s) on deposit with the HCDA during the entire term of this ROE. Upon request, GRANTEE shall furnish the applicable portion of the policy or policies to confirm that HCDA is named as an additional insured in the above limits.
- (h) Failure of GRANTEE 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 GRANTEE.
- (i) The HCDA is a self-insured State agency. GRANTEE's insurance or self-insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of, and shall not contribute toward insurance provided by GRANTEE.

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 GRANTEE to obtain insurance sufficient in coverage, form, and amount to provide such adequate protection.

10. **Condition of Premises/Assumption of Risk.** GRANTEE 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 GRANTEE. GRANTEE agrees that all property, approved improvements, and equipment of GRANTEE kept or stored on the Premises during the term of this ROE shall be so kept or stored at the sole risk of GRANTEE. This provision shall survive the expiration or earlier termination of the ROE.

11. **Compliance with Laws and Regulations.** GRANTEE 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, and all applicable health and safety laws and regulations.

12. **Prohibited Use.** Any use of the Premises not authorized herein shall constitute a material breach of this ROE. Upon such breach, the HCDA may terminate this ROE and pursue any other remedies to which the HCDA is entitled by law; provided that, the HCDA shall first give GRANTEE notice thereof and afford GRANTEE 48 hours to cure such breach.



13. **Improvements.** GRANTEE shall not construct any improvements of any kind or nature upon the Premises 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 GRANTEE shall remain the property of GRANTEE. GRANTEE 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. In the event the GRANTEE shall fail to remove the improvements prior to the termination or revocation of this Permit 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 any storage to GRANTEE. This provision shall survive the termination of this ROE.

14. **No Lien.** GRANTEE 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) GRANTEE shall pay the HCDA a usage fee of \$1,232.50 per month (2,106 square feet of parking space at \$0.50 per square foot, and 3,650 square feet of storage space at \$0.05 per square foot) without notice or demand, on the first (1st) day of each month for the ensuing month during the term of this ROE. If the first (1st) day falls on a weekend or State holiday, GRANTEE shall tender payment of the usage fee on the first business day immediately following the weekend or State holiday. Without prejudice to any other remedy available to the HCDA, GRANTEE shall, without further notice or demand, pay to the HCDA, a service charge of \$200.00 for each calendar month in which payment is due and remains unpaid more than ten (10) days after its due date on the first of the month.
- (b) GRANTEE shall regularly inspect and properly maintain the 499-gallon propane tank to ensure safe operating conditions at all times. GRANTEE shall promptly repair or remove the propane tank at its sole expense if any hazard and/or risk to public safety is determined by (a) GRANTEE, (b) a licensed inspector or (c) a government or regulatory enforcement agency.
- (c) No one may reside on the Premises, and the Premises may not be accessed for any other purpose except as authorized herein.

- (d) GRANTEE must keep the Premises clear of all unauthorized persons, unauthorized vehicles, debris, and trash at all times during this ROE.
- (e) Plants, rocks, dirt, asphalt and other materials that are on or part of the Premises shall not be harmed or removed from the Premises.
- (f) The HCDA reserves the right to impose additional terms and conditions it deems reasonably necessary. Written notice of any such additional terms and conditions shall be provided to GRANTEE not less than 30 days prior to the effective date. Any such additional terms and conditions shall not materially interfere with or impair GRANTEE's rights of use herein.

17. **Termination.** Either Party may terminate this ROE at any time upon not less than 30 days prior written notice.

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 given below:

Hawaii Community Development Authority  
Attention: Lindsey Doi, Asset Manager  
547 Queen Street  
Honolulu, Hawaii 96813  
Telephone: (808) 594-0300  
Fax: (808) 587-0299  
Email: [contact@hcdaweb.org](mailto:contact@hcdaweb.org)

**Kupu:**  
Attention: Kupu  
677 Ala Moana Blvd. Ste 1200  
Honolulu, HI 96813  
E-mail: [matthew.bauer@kupu-hawaii.org](mailto:matthew.bauer@kupu-hawaii.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.

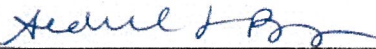
22. **Counterparts.** This ROE may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.

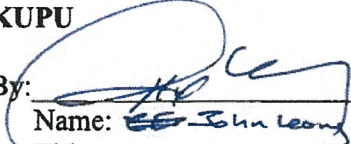
23. **Entire Agreement.** This ROE constitutes the entire Agreement and understanding between the Parties and shall supersede any and all prior communications, representations, or agreements, both verbal and written, between the Parties regarding the use of the Premises. This ROE cannot be modified except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

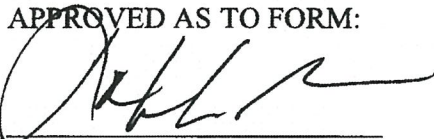
**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the HCDA and GRANTEE 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 and CEO

**KUPU**  
By:   
Name: ~~EE~~ John Leong  
Title: CEO

APPROVED AS TO FORM:  
  
Deputy Attorney General





FIRST AMENDMENT TO REVOCABLE RIGHT OF ENTRY (ROE 1-19)

This First Amendment to Revocable Right of Entry 1-19 (“**First Amendment**”) is executed this \_\_\_\_\_ (“**Execution Date**”), by and between the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY (“HCDA” or “GRANTOR”)**, a body corporate and a public instrumentality of the State of Hawaii, and **KUPU**, whose business address is 677 Ala Moana Blvd, Suite 1200, Honolulu, Hawaii 96813 (“**KUPU**” or “**GRANTEE**”) (GRANTOR and GRANTEE are each called a “**Party**” and collectively called “**the Parties**”).

WHEREAS, the Parties entered into a Revocable Right of Entry (ROE 1-19) on August 9, 2019 (hereinafter, the “**ROE**”), a copy of which is attached hereto as Exhibit “A”; and

WHEREAS, the Parties desire to extend the term of the ROE for two additional years;

WHEREAS, the HCDA Kakaako Board approved the two-year extension at its Authority meeting held on August 5, 2020;

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:

**3. Term and Duration.** The term of this ROE shall commence at 12:00 a.m. on October 1, 2020 (“**Commencement Date**”) and terminate at 11:59 p.m. on September 30, 2022 (“**Termination Date**”). This ROE shall automatically terminate on the Termination Date, unless earlier revoked as provided herein. GRANTEE 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, upon execution 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. This 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. This First Amendment 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 amendment of the ROE.

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: \_\_\_\_\_  
Garett Kamemoto  
Its Interim Executive Director

**KUPU**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General