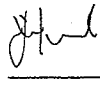


Reviewed and Approved by Executive Director: 

May 5, 2021

FOR ACTION

I. REQUEST

Authorize the Executive Director to Execute a Right of Entry Agreement and a Grant of Easement, Substantially in the Forms Attached, with the State of Hawaii Department of Transportation for the Purposes of Constructing and Maintaining the Ala Moana Boulevard Elevated Pedestrian Walkway Bridge Project Located at Oahu Tax Map Key No. (1) 2-1-058: 132 in Kakaako Makai

II. BACKGROUND

In November 2019, the State of Hawaii Department of Transportation Highways Division (HDOT), with the assistance of Victoria Ward Limited (VWL), secured a \$20 million “Better Utilizing Investments to Leverage Development” (BUILD) grant from the U.S. Department of Transportation to construct an elevated pedestrian walkway over Ala Moana Boulevard in Kakaako Makai (the Project).

The Project would provide a critical mauka-makai connection over a major six-lane boulevard, connecting a potential rail station to the waterfront promenade, including Kewalo Basin Park and Ala Moana Beach Park. As an elevated walkway, the Project would also ensure a safe pedestrian crossing of Ala Moana Boulevard.

The Project would bridge the Victoria Ward Park on the mauka side of Ala Moana Boulevard (the Mauka Landing Site) to the landscaped berm on the Kewalo Basin Harbor side of Ala Moana Boulevard, just Ewa of the Charter Boat building (the Makai Landing Site). VWL and the Ward Village Owners Association (WVOA) currently control the Mauka Landing Site, while the Makai Landing Site is owned by the Hawaii Community Development Authority (HCDA) and leased to VWL as part of the Kewalo Basin Harbor Lease.

In February 2020, the HCDA Kakaako Board authorized the negotiation and execution of a Memorandum of Agreement (MOA) to implement the BUILD Grant for the Project. In September 2020, HDOT, HCDA, VWL, and WVOA executed the MOA and began securing the necessary permits and approvals to encumber the funds.

In April 2021, the HCDA Kakaako Board authorized the execution of a Development Agreement (DA) to implement the BUILD Grant for the Project. The DA has since been finalized and approved by all parties and is now pending signature.

The BUILD grant funds must be encumbered (i.e., under contract) by June 2021 and expended by September 30, 2026. As part of this process, HCDA is working collaboratively with HDOT, VWL, and WVOA to provide all necessary agreements in a timely manner.

III. DISCUSSION

The HCDA's participation in the Project is limited to its capacity as the landowner of the Makai Landing Site. As approved at the February 5, 2020 Kakaako Meeting, the HCDA's general responsibilities are as follows:

1. Participate in project planning, design, and implementation.
2. Provide a Right of Entry (site access) for pre-construction and construction activities; and
3. Grant an easement in favor of the HDOT for continued maintenance of the Project on HCDA property.

In order to construct the Project, HDOT requires a Right of Entry (ROE) on the HCDA-owned land near the Makai Landing Site to provide access to its contractors for the duration of construction. HDOT anticipates construction will take place from January 2022 through June 2023 and requests an ROE term length of at least two years to allow for potential unanticipated delays. A draft of the proposed Right of Entry Agreement is attached hereto as Exhibit A.

HDOT also requires a Grant of Easement to provide maintenance for the Project on the Makai Landing Site. This maintenance will be provided at no cost to the HCDA. A draft of the proposed Grant of Easement is attached hereto as Exhibit B.

IV. RECOMMENDATION

Authorize the Executive Director to Execute a Right of Entry Agreement and a Grant of Easement, Substantially in the Forms Attached, with the State of Hawaii Department of Transportation for the Purposes of Constructing and Maintaining the Ala Moana Boulevard Elevated Pedestrian Walkway Bridge Project Located at Oahu Tax Map Key No. (1) 2-1-058: 132 in Kakaako Makai and undertake all tasks necessary to effectuate the purpose(s) of this For Action.

Attachments:

Exhibit A – DRAFT Right of Entry Agreement (ROE 1-21)

Exhibit B – DRAFT Grant of Easement

Prepared By: Lindsey Doi, Asset Manager RR

Reviewed By: Deepak Neupane, P.E., AIA, Executive Director DN

REVOCABLE RIGHT OF ENTRY (ROE 1-21)

By this NONEXCLUSIVE REVOCABLE RIGHT OF ENTRY AGREEMENT ("ROE") made and executed this _____, the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY ("HCDA" or "GRANTOR")**, a body corporate and a public instrumentality of the State of Hawaii, hereby grants to the **STATE OF HAWAII DEPARTMENT OF TRANSPORTATION**, whose address is, 869 Punchbowl Street, Honolulu, Hawaii 96813, (hereafter referred to as "**HDOT**" or "**GRANTEE**") (**GRANTOR** and "**GRANTEE**" are each called a "**Party**" and collectively called "**the Parties**"), a nonexclusive revocable 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, subcontractors and independent contractors (collectively, "**Permitted Persons**") a non-exclusive right of entry to enter upon the Premises (as defined below) for the sole purposes set forth in Paragraph 4 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 the approximately 6,509 square foot portion of that certain real property commonly referred to as "CONSTRUCTION PARCEL C-3, CONSTRUCTION PARCEL C-4 AND CONSTRUCTION PARCEL C-5" located at 1125 Ala Moana Boulevard, Honolulu, Hawaii, and identified by Oahu Tax Map Key Nos. (1) 2-1-058-132 (por.) and (1) 2-1-058-133 (por.) ("**Premises**") and depicted on the map attached hereto as Exhibit "A," which is incorporated herein by reference. Any question or conflict regarding the boundary of the Premises shall be unilaterally resolved in favor of the GRANTOR's determination.

3. **Term.** The term of this ROE granted hereby shall be applicable for a period that shall commence from 12:00 a.m. on the date stated in GRANTEE's Contractor's Notice to Proceed on the Project that is the described in the Development Agreement, dated April 14, 2021, ("**Commencement Date**") and shall continue until final acceptance in writing by HDOT of the completion of the Project ("**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.

4. **Use of Premises.** This ROE is nonexclusive. The ROE granted hereby shall be for the sole purpose of providing access for Permitted Persons to maintain and operate a staging area for construction vehicles, accessing construction areas, parking vehicles and storing construction material with the prior written approval of GRANTOR (collectively, the "**Use of Premises**") for construction and completion of the Ala Moana elevated walkway project, as described in that certain Development Agreement dated April 14, 2021 ("Development Agreement"). All landscaping that is removed or

damaged during work on Premises must be replaced by GRANTEE with landscaping of similar size and type upon termination of this ROE. GRANTEE shall employ appropriate safety measures at all times, including but not limited to, traffic mitigation measures, environmental protection measures, and roadway protection measures (i.e., steel plates). GRANTEE shall not obstruct or impede access to Kewalo Basin Harbor and any of the associated parking lots. GRANTEE shall not block the use of any parking stall. Any GRANTEE vehicles or equipment parked or stored on the Premises or otherwise obstructing ingress and egress, including impeding driveways, entrances and exits, will be subject to removal and/or 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 in Paragraph 4 above, 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.** At all times during the term of this ROE, GRANTEE shall exercise due care and diligence 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/or use the Premises with the approval of the HCDA, and GRANTEE shall exercise due care for public safety. 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 GRANTEE's or Permitted Persons' use or the actions of third-persons due to GRANTEE's or Permitted Persons' 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 arising out of the ROE.

8. **Insurance.** (a) GRANTEE shall require its selected Contractor ("Contractor") to obtain and maintain at all times during the term of this ROE, at the Contractor's 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 and Advertising Limit

Umbrella Liability:

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

Worker's Compensation:

Coverage A: As required by the laws of the State of Hawaii
Coverage B: Employer's Liability:
\$1,000,000 Bodily Injury by Accident Per Accident
\$1,000,000 Bodily Injury by Disease
\$1,000,000 Policy Limit and \$1,000,000 Per
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 from GRANTEE's Contractor to evidence compliance with the insurance requirements set forth in subsection (a) above.
- (c) The insurance policies obtained by GRANTEE's Contractor 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) GRANTEE shall notify the HDCA at least fifteen (15) days prior to the termination, cancellation, or any material change in GRANTEE's Contractor's insurance coverage.
- (e) GRANTEE's Contractor shall cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of GRANTEE's Contractor or Permitted Persons arising out of the ROE.
- (f) The procuring of such required policy or policies of insurance shall not be construed to limit GRANTEE's Contractor's liability under this ROE or to fulfill the indemnification provisions and requirements of this ROE. Notwithstanding said policy or policies of insurance, GRANTEE's Contractor 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 arising out the ROE.

- (g) GRANTEE's Contractor 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 a certificate of insurance and copy(ies) of all insurance policies evidencing that HCDA is included as an additional insured in the above limits.
- (h) Failure of GRANTEE's Contractor 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 and GRANTEE are self-insured State entities. GRANTEE's Contractor's insurance shall be primary.

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.

9. **Grantee Responsibility.** GRANTEE shall be responsible, to the extent permitted by law, for damage or injury caused by its officers and employees in the scope of their employment provided that funds are appropriated and allotted for that purpose. GRANTEE shall require its Contractor to indemnify HCDA and include the additional named insureds listed in subparagraph 8(c) in the required insurance policies and with the required limits as specified in subparagraph 8(a) of this ROE.

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.

12. **No Hazardous Materials.** GRANTEE shall not cause nor permit the escape, disposal or release of any hazardous materials except as permitted by law and as specified in Paragraph 4, Use of Premises. GRANTEE 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 and in accordance with Paragraph 4. If any governmental agency should require testing to ascertain whether or not there has been any release of hazardous materials by GRANTEE, then GRANTEE shall be responsible for the reasonable costs thereof. In addition, GRANTEE shall execute affidavits, and other documents from time to time at the HCDA's request concerning GRANTEE's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released thereon by GRANTEE.

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.

13. **Prohibited Use.** Any use of the Premises not authorized in Paragraph 4 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 forty-eight (48) hours to cure such breach.

14. **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. The HCDA, through the Development Agreement, consents to GRANTEE's construction of the Ala Moana Boulevard Elevated Pedestrian Walkway Project, Federal-Aid Project No. BR-092-1(029) to improve pedestrian safety and facilitate increased pedestrian traffic in Kakaako pursuant to the terms and conditions set forth in the Development Agreement. 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 expiration 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 expiration 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 any storage to GRANTEE. This provision shall survive the automatic expiration or earlier termination of this ROE.

15. **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.

16. **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.

17. **Additional Terms and Conditions.** Any additional terms and conditions or modifications to this ROE must be approved in writing by all Parties.

- (a) No one may reside on the Premises, and the Premises may not be accessed for any other purpose except as authorized herein.
- (b) GRANTEE must keep the Premises clear of all unauthorized persons, unauthorized vehicles, debris, and trash at all times during this ROE.
- (c) The HCDA reserves the right to impose additional terms and conditions it deems reasonably necessary, provided that: (i) written notice of any such additional terms and conditions shall be provided to GRANTEE not less than thirty (30) days prior to their effective date in accordance with the provisions of Paragraph 19 Notices below and (ii) any such additional terms and conditions shall not materially interfere with or impair GRANTEE's rights of use under Paragraph 4 of this ROE.

18. **Termination.** Either party may terminate this ROE at any time upon not less than thirty (30) days prior written notice to the other in accordance with the provisions of Paragraph 19 Notices below.

19. **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: Lindsey Doi, Asset Manager
547 Queen Street
Honolulu, Hawaii 96813
Telephone: (808) 594-0300
Fax: (808) 587-0299
Email: dbedt.hcda.contact@hawaii.gov

State of Hawaii, Department of Transportation
Fawn Yamada, Right-of-Way Manager
Attention: Cody-Allen Ching
Address: 869 Punchbowl Street
Honolulu, Hawaii 96813

Telephone: (808) 692-7320

E-mail: cody-allen.s.ching@hawaii.gov

20. **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.

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

22. **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.

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

24. **Entire Agreement.** This ROE and Development Agreement constitute 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: _____
Deepak Neupane, P.E., AIA
Executive Director

"GRANTOR"

APPROVED AS TO FORM:

Deputy Attorney General

**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION**

By: _____
Name
Title

"GRANTEE"

APPROVED AS TO FORM:

Deputy Attorney General

Exhibit B

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return By: ☐ Mail ☒ Pickup

STATE OF HAWAII
Department of Transportation
869 Punchbowl Street
Honolulu, Hi 96813

This document contains ___ pages.

WO# _____

TITLE OF DOCUMENT(S):

GRANT OF EASEMENT

R/W _____

PARTIES TO DOCUMENT:

GRANTOR: HAWAII COMMUNITY DEVELOPMENT AUTHORITY, a body corporate
and public instrumentality of the State of Hawaii

GRANTEE: STATE OF HAWAII DEPARTMENT OF TRANSPORTATION

Description: Being portions of Royal Patent 4483, Land Commission Award 7712, Apana
6, Part 1, to M. Kekuanaoa (No V. Kamamalu), the Former Sea Fishery of
Kukuluaeo and Ala Moana Reef Area (C.S.F. 12,695).

Tax Map Keys: 2-1-058-132

Address: 1125 Ala Moana Blvd., Honolulu, Hawaii, 96813

GRANT OF NON-EXCLUSIVE EASEMENT

THIS INDENTURE is entered into as of _____, between the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY**, a body corporate and public instrumentality of the State of Hawaii and whose address is 547 Queen Street, Honolulu, Hawaii 96813, hereinafter referred to as the ("**Grantor**" or "**HCDA**") and the **STATE OF HAWAII** through its **DEPARTMENT OF TRANSPORTATION**, whose address is 869 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter referred to as the ("**Grantee**" or "**HDOT**").

The Grantor and the Grantee are entering into this Grant of Non-Exclusive Easement pursuant to that certain Development Agreement entered into among HCDA, HDOT, VICTORIA WARD, LIMITED, a Delaware corporation, whose address is 9950 Woodloch Forest Drive, Suite 1100, The Woodlands, Texas 77380 ("**VWL**"), and Ward Village Owners Association, a Hawaii nonprofit corporation ("**WVOA**"), dated _____, 2021, a short form of which is recorded at the Bureau of Conveyances of the State of Hawaii as Document No. _____ ("**Development Agreement**").

A. The Grantor, for and in consideration of the terms, conditions and covenants herein contained and on the part of Grantee to be observed and performed, does hereby grant unto Grantee, its successors and permitted assigns, the following nonexclusive and perpetual easement rights ("**Easement**"):

The right to construct, reconstruct, install, maintain, operate, repair and remove such structures, facilities, equipment and appurtenances (collectively, "**Construction Work**") necessary for access and maintenance purposes in, over, under, across and through that certain parcel of land designated as EASEMENT "P-2", consisting of approximately 11,792 square feet, hereinafter called the "**Easement Area**", located within Kewalo Basin Harbor, situate at Kaakaukui, Kukuluaeo, Honolulu, Oahu, Hawaii, ("**Property**"), more particularly described in Exhibit "A," and shown on the map attached hereto as Exhibit "A-1," all of which are made a part hereof, said exhibits being respectively a survey description and survey map prepared by ControlPoint Surveying, Inc.) in connection with the elevated pedestrian walkway to be built over Ala Moana Boulevard (the "**Bridge**"), along with adjacent structural components on the southwest (makai) side of Ala Moana Boulevard, including, without limitation, the "**Makai Abutment**" and the "**Makai Walkway**" providing access to the Bridge and to the northeast (or mauka) side of Ala Moana Boulevard. All such improvements of the project are depicted on the attached Exhibit "B", incorporated herein by reference (the "**Project**"), and

The right to operate and provide ongoing structural maintenance and repair of the Bridge, Makai Walkway, and Makai Abutment, including, without limitation, concrete structures and any railings in, over, under, across and through the Easement Area.

TOGETHER WITH, the right from time to time, and at all reasonable times to enter upon the Easement Area for the above-mentioned purposes, and also the right of ingress and egress across immediately adjacent lands of Grantor, subject to written notification of any affected lessee, permittee, or licensee of Grantor, except in the event of an emergency, in which case notice will be given as soon as reasonably possible.

B. TO HAVE AND TO HOLD the Easement rights unto the Grantee, its successors and permitted assigns, in perpetuity, SUBJECT, HOWEVER, to the following terms, conditions, and covenants:

1. The Grantee shall procure the contractors ("**Grantee's Contractors**") for, and administer the construction of, the Project in accordance with all applicable State, local and federal laws, including, but not limited to, the policies, requirements, and procedures relating to construction contracts for Federal-aid highway projects.

2. The Grantee shall require the general contractor for the Project to defend, indemnify, and hold harmless the HCDA, Victoria Ward Ltd. and the Ward Village Owner's Association for any claims made against the foregoing parties arising out of the acts or omissions by the general contractor in the performance of the Construction Work related to the Project.

3. The Grantee shall administer the financial accounting for the construction of the Project, including, but not limited to, the timely payment for all construction costs and the processing of Federal reimbursement requests.

4. During its use, Grantee shall (a) keep the Easement Area and the improvements therein in a clean, sanitary, orderly, and safe condition and repair; (b) at all times use the Easement Area in a manner consistent with government safety standards; and (c) not make or permit any waste, strip, spoil, nuisance, or unlawful, improper, or offensive use of the Easement Area, or any purpose not expressly permitted by this Indenture. Grantee shall neither make nor suffer to be made any construction, alterations, or other modifications to the Easement Area, except for the construction of the Bridge, Makai Walkway and Makai Abutment permitted by this Indenture and the Development Agreement, without the express prior written approval of Grantor, which approval may be withheld or conditioned upon such terms as Grantor may determine in Grantor's sole and absolute discretion.

5. The Grantee shall be responsible for paying the cost of all utilities, including, but not limited to, the cost associated with electricity usage for lighting and water usage for irrigation of the Makai Walkway and Makai Abutment in the Easement Area.

6. Grantor reserves unto itself and its successors and assigns the full use and enjoyment of the Easement Area and the right to grant to others rights and privileges for any and all purposes affecting the Easement Area, provided, however, that the rights herein reserved shall not be exercised by Grantor or any agent, representative or assign of Grantor, in such manner so as to interfere unreasonably with Grantee's use of the Easement Area for the purposes for which this Indenture is granted, as described in paragraph A above.

7. All improvements placed in or upon the Easement Area by the Grantee, including the Bridge, Makai Walkway, and Makai Abutment (a) shall be installed or constructed by Grantee at its expense with no cost or expense to Grantor; (b) shall remain Grantee's property and responsibility; and (c) may be removed or otherwise disposed of by Grantee at any time in accordance with the Development Agreement; provided that the removal shall be accomplished with minimum disturbance to the Easement Area, shall be restored to a condition as close as reasonably possible to that which existed prior to the Grantee's use of the Easement Area, reasonable wear and tear excepted, within a reasonable time after removal.

8. Upon completion of any work performed in or upon the Easement Area, Grantee shall remove therefrom all equipment and unused or surplus materials, if any, and shall leave the Easement Area in a clean and sanitary condition satisfactory to Grantor.

9. The Grantor shall not at any time during the term of this Indenture construct or erect any building foundation of any kind below the surface of the Easement Area or at any time erect any building or structure of any kind, above or on the surface of the Easement Area unless (a) agreed to in the Development Agreement by HCDA. (b) said building, structure or building foundation is first approved in writing by the Grantee, which approval shall not be unreasonably withheld or delayed, and (c) the construction, reconstruction, installation, maintenance, operation, repair and removal of said building, structure and/or building foundation shall not unreasonably interfere with the Grantee's use of or access to the Easement Area.

10. The Easement or any other rights granted herein shall not be sold, assigned, conveyed, leased, mortgaged or otherwise transferred or disposed of, whether voluntarily or by operation of law, except with Grantor's prior written consent. Any transfer in contravention of this provision shall be void.

11. The use and enjoyment of the Easement Area pursuant to this Indenture shall not be exercised in support of any policy that discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, disability, age, or infection with the human immunodeficiency virus (HIV).

12. Grantee acknowledges that it has inspected the Easement Area and knows its condition and fully assumes all risks incident to its use and enjoyment of the Easement Area pursuant to this Indenture and accepts the Easement Area "as is". Grantee hereby assumes all risks associated with performance of the Construction Work by Grantee and all persons claiming by, through, or under Grantee in performance of the Construction Work, but exclude the risks of Grantor's gross negligence or willful and wanton conduct.

13. Grantee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law and with the prior written consent of Grantor. Grantee shall not allow the storage or use of such materials in any manner not sanctioned by law nor allow to be brought onto the Easement Area any such materials except to use in the ordinary course of Grantee's business and with Grantor's prior written consent. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous

materials by Grantee, then Grantee shall be responsible for the reasonable costs thereof. In addition, Grantee shall execute affidavits, representations and the like from time to time at Grantor's request concerning Grantee's best knowledge and belief regarding the presence of hazardous materials on and/or within the Easement Area placed or released by Grantee. These covenants shall survive the expiration or earlier termination of this Indenture.

For the purpose of this Indenture "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 bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

14. Grantee, in the exercise of the rights granted herein, shall comply with all municipal, state and federal laws, ordinances, regulations, orders, judgments, directives, guidelines, or policies pertaining to the Easement Area now or hereafter in force.

15. Grantee and Grantor are self-insured entities and Grantor shall be responsible, to the extent permitted by law, for damage or injury caused by its officers and employees in the scope of their employment provided that funds are appropriated and allotted for that purpose. Grantee shall require its contractor to indemnify Grantor as an additional named insured and Grantee's contractor's insurance shall be primary.

16. Grantee shall not commit or permit any act or neglect through Grantee's use of the Easement Area or otherwise that may cause the Property at any time to become subject to any attachment, judgment, lien, charge, or other encumbrance whatsoever resulting from the acts or omissions of Grantee, and Grantee shall be responsible, to the extent permitted by law, for damage or injury caused by its officers and employees in the scope of their employment provided that funds are appropriated and allotted for that purpose. Grantee shall promptly discharge or cause to be discharged of record every such attachment, judgment, lien, charge, or other encumbrance of any nature which may be filed against the Property as a result of Grantee's acts or omissions without Grantor's approval and which encumbers Grantor's fee simple title interest in the Property, and, should any such claim or lien be filed against the Property, or any action or proceeding relating to any such claim or lien be instituted affecting Grantor's fee simple title to the Property, or imposing an obligation on Grantor, Grantee shall give Grantor written notice thereof as soon as Grantee obtains actual knowledge thereof.

17. Upon dedication and conveyance of the applicable portion of the Bridge, Makai Walkway, and Makai Abutment, to any governmental authority for use as a public right of way, this Indenture shall be modified to reflect the same.

18. Upon termination or expiration of this Indenture, Grantee shall peaceably deliver unto Grantor possession of the Easement Area, together with all improvements existing or constructed thereon or Grantee shall remove such improvements at the Grantor's option and shall restore the Easement Area to the state it was in immediately prior to the inception of Grantee's

use thereof, or as close thereto as possible, within a reasonable time and at the expense of Grantee. If Grantee does not remove the improvements or restore the Easement Area to the reasonable satisfaction of Grantor as provided herein, Grantor may effect such action and Grantee agrees to pay all costs and expenses for such action. Furthermore, upon the termination or expiration of this Indenture, should Grantee fail to remove any and all of Grantee's personal property from the Easement Area, after notice thereof, Grantor may remove any and all of Grantee's personal property from the Easement Area, and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Grantee and Grantee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of this Indenture.

19. The failure by Grantor to insist on the strict performance of any term hereof or the failure to exercise any right or remedy shall not constitute a waiver of any such breach or of any term hereof. Efforts by Grantor to mitigate the damages caused by Grantee's default or breach of the terms and covenants of this Indenture shall not be construed to be a waiver of Grantor's right to recover damages or any monies due Grantor hereunder.

20. The term, "Grantor", wherever used herein, shall mean and include the Grantor and the Grantor's successors and assigns, and the term, "Grantee", wherever used herein, shall mean the State of Hawaii and its successors and permitted assigns.

21. The parties hereto agree that this Indenture may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded, and the remaining pages assembled as one document.

22. This Indenture 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 Easement Area. This Indenture cannot be modified except by a written instrument signed by both parties.

SIGNATURES APPEAR ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Indenture as of the date first above mentioned.

GRANTOR:

**HAWAII COMMUNITY DEVELOPMENT
AUTHORITY**, a body corporate and public
instrumentality of the State of Hawaii

By: _____
Name: Deepak Neupane, P.E., AIA
Title: Executive Director

APPROVED AS TO FORM:

By: _____
Deputy Attorney General

GRANTEE:

**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION**

By: _____
Name:
Title:

APPROVED AS TO FORM:

By: _____
Deputy Attorney General

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this ____ day of _____, 20____, before me personally appeared _____, to me known, who, being by me duly sworn or affirmed, did say that he is the executive director of the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY**, a body corporate and public instrumentality of the State of Hawaii; that he signed the foregoing Indenture on behalf of said corporation by authority of its members; and that the Indenture is the free act and deed of said corporation.

Doc Date: _____, 20____ # Pages: ____	
Name: _____ First Circuit	
Doc. Description: Grant of Easement, TMK 9-1-013, Midway Rd (Portion)	
Signature _____	Date _____
NOTARY CERTIFICATION	
[Affix Seal]	

Notary Signature
Type or print name: _____
Notary Public, First Circuit, State of Hawaii
My commission expires: _____

[Affix Seal]

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this day of _____, before me appeared _____, to me personally known, who, being by me duly sworn, did say that such person is the _____ of _____, and the foregoing _____-page instrument entitled GRANT OF EASEMENT, dated _____, was signed on behalf of said corporation by authority of its Board of Directors, and said Officer acknowledged said instrument to be the free act and deed of said corporation. This acknowledgement is deemed to include my Notary Certification.

Notary Signature
Type or print name:
Notary Public, First Circuit, State of Hawaii
My commission expires:

[Affix Seal]

EXHIBIT "A"

(Easement P-2 Legal Description)

**Easement P-2
(For Pedestrian Access Purposes)**

Being a portion of Lot 1 as shown on DPP File No. 2015/SUB-38.

Situated at Kaakaukui and Kukuluao, Honolulu, Oahu, Hawaii.

Beginning at the Northeast corner of this parcel, and on the South side of Ala Moana Boulevard, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 6,663.61 feet South and 2,224.08 feet West, and running by azimuths measured clockwise from True South:

1. 32° 55' 11.39 feet along Lot 2 as shown on DPP File No. 2015/SUB-38;
2. 118° 24' 38.26 feet along the remainder of Lot 1 as shown on DPP File No. 2015/SUB-38;
3. 34° 01' 14.82 feet along same;
4. Thence, along same, on a curve to the right with a radius of 22.00 feet, the chord azimuth and distance being:
315° 36' 14.69 feet;
5. 335° 06' 21.87 feet along same;
6. 32° 55' 31.87 feet along same;
7. 119° 54' 51.31 feet along same;
8. Thence, along same, on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being:
134° 45' 10.25 feet;
9. 149° 36' 38.60 feet along same;

10. Thence, along same, on a curve to the right with a radius of 8.00 feet, the chord azimuth and distance being:

164° 18' 4.06 feet;

11. 179° 00' 2.50 feet along same;

12. Thence, along same, on a curve to the left with a radius of 8.00 feet, the chord azimuth and distance being;

164° 27' 4.02 feet;

13. 149° 54' 21.60 feet along same;

14. Thence, along same, on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:

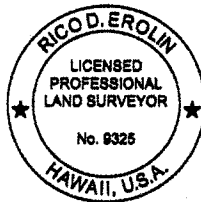
134° 52' 10.38 feet;

15. 119° 50' 96.40 feet along same;

16. 209° 37' 33.91 feet along same;

17. 296° 05' 94.08 feet along the South side of Ala Moana Boulevard;

18. 302° 55' 143.00 feet along same to the point of beginning and containing an area of 11,792 square feet or 0.271 acre.



March 18, 2021
Honolulu, Hawaii

A handwritten signature in black ink, appearing to read "Rico D. Erolin", written over a horizontal line.

Rico D. Erolin
Licensed Professional Land Surveyor
Certificate Number 9325

Tax Map Key: (1) 2-1-058: 132

EXHIBIT "A-1"

(Easement P-2 Map)

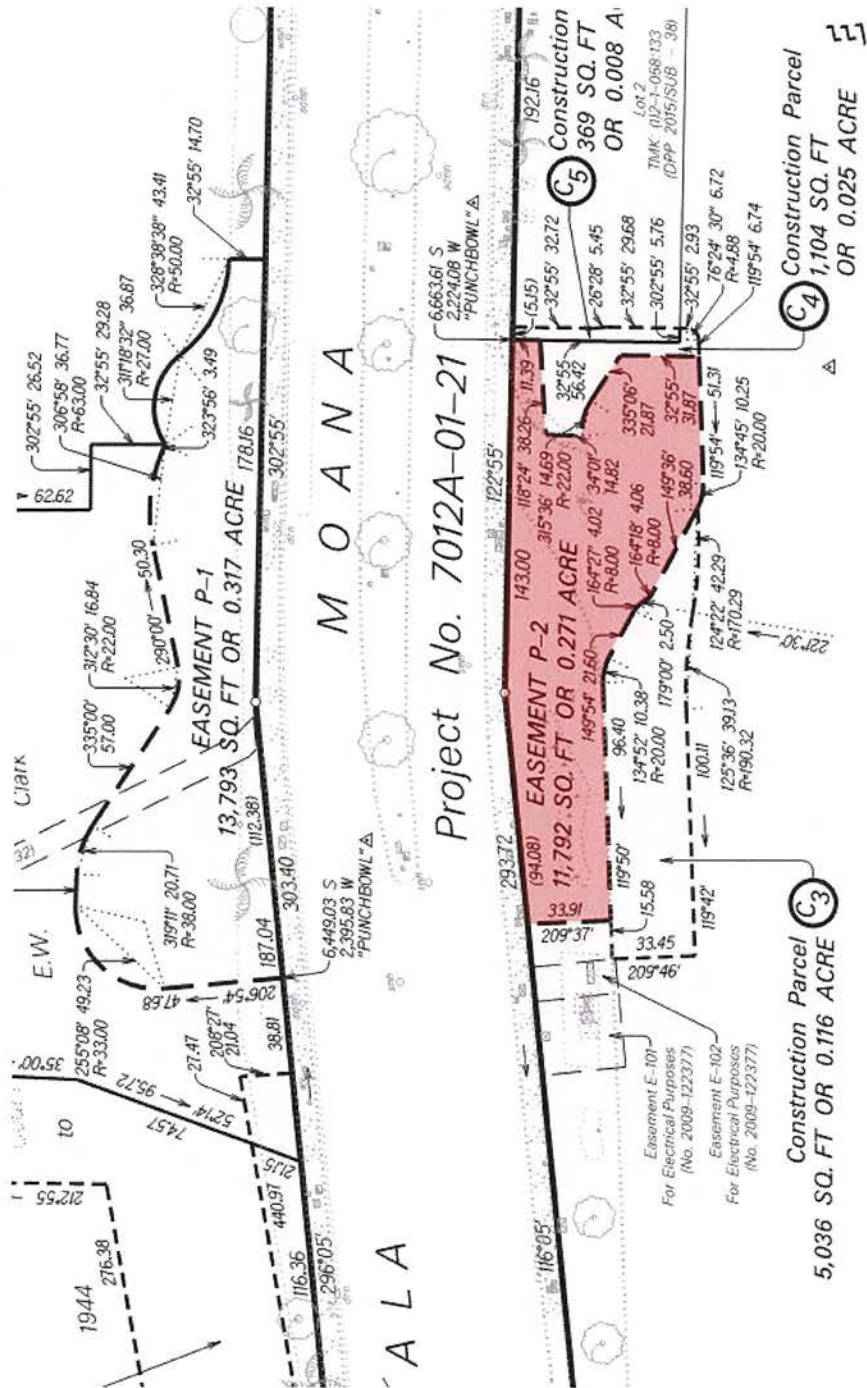


EXHIBIT B"

(The Project)

