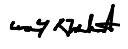


Reviewed and Approved by Executive Director: 

September 7, 2022

## **FOR ACTION**

### **I. REQUEST**

Consider Authorizing the Executive Director to Amend the Term Established in the May 17, 2019 Right of Entry Agreement No. 7-19 between the Hawaii Community Development Authority and Kalaeloa Heritage and Legacy Foundation (KHLF), Which Granted a Right of Entry to KHLF, for Maintenance and Operation of the Kalaeloa Heritage Park, Located on Parcel No. 13073-D, 91-1940 Coral Sea Road, Kapolei, Hawaii, Tax Map Key No. (1) 9-1-013:069, and Extend the Term for an Additional Twelve (12) Months.

### **II. BACKGROUND**

The Kalaeloa Heritage and Legacy Foundation (KHLF) currently holds a nonexclusive revocable Right of Entry Agreement (ROE 7-19) from the Hawaii Community Development Authority (HCDA), for the sole purpose of preserving and maintaining the archaeological, cultural, and natural resources in the Kalaeloa Heritage Park (hereafter, the Park). ROE 7-19 is attached hereto as Exhibit A.

The Park is located on an approximately 11.501-acre parcel identified as Parcel No. 13073-D located in Kalaeloa Community Development District (KCDD) and identified as Tax Map Key No. (1) 9-1-013:069.

ROE 7-19 was executed on May 17, 2019, and was originally intended to be a short-term, six-month agreement to allow time to negotiate a longer-term Stewardship Agreement with KHLF for future maintenance of the Park. However, due to the onset of the COVID-19 pandemic and other issues, the HCDA and KHLF agreed to extend the term of ROE 7-19 four times while negotiations on the Stewardship Agreement continue. ROE 7-19 currently terminates on November 17, 2022.

HCDA staff and KHLF negotiated the Scope of Work and terms for a Stewardship Agreement in 2019, but execution of the Stewardship Agreement was put on hold after some Authority members raised concerns over a burial vault and other improvements located at the Park.

Authority members requested KHLF to first complete the following milestones, included as a part of the Second Amendment to ROE 7-19, prior to the execution of a Stewardship Agreement:

1. Work with HCDA to finalize a proposed Stewardship Agreement.
2. Develop a management plan specifying how the population of free-range animals (i.e., chickens, peacocks, etc.) is being managed by KHLF to ensure that the premises is not damaged or adversely impacted.

3. Maintain an updated monthly site inventory at all times, that includes all large equipment brought on premises (i.e., water totes/trucks, storage containers, wood chippers, equipment trailers, etc.).
4. Stripe/demarcate the parking and events area located within the maintenance yard to ensure that use and activities are conducted within the TMK boundaries of the ROE premises.
5. List of cultural, historical, and archaeological sites/features to be refurbished/restored, and specify how these cultural, historical, and archaeological sites/features will be restored.
6. List all new native animal or plant species (e.g., pueo, etc.) for reintroduction on the Premises.
7. List the available grants that KHLF is pursuing to help fund maintenance activities on the Premises.
8. Submit copies of all building permits/approvals and related correspondence for all structures on premises.

KHLF satisfactorily completed the first seven milestones and partially completed milestone eight by obtaining an after-the-fact building permit for the kauhale at the Park. However, approval of the burial vault located at the Park is pending further action from the Hawaii State Historic Preservation Division (SHPD). As recommended by prior Authority members, the HCDA will not issue a Stewardship Agreement until the burial vault is approved by the appropriate parties.

The proposed fifth amendment to ROE 7-19 would amend the term of the agreement, further extending the termination date by one additional year to 11:59 p.m. on November 17, 2023, to allow more time to obtain SHPD approval.

KHLF has been engaged in discussion with SHPD and its Oahu Island Burial Council (OIBC) to bring resolution to this issue for over two years. In June 2021, OIBC deferred concurrence of the burial vault to SHPD. In August 2021, KHLF submitted documentation to SHPD with a request for after-the-fact approval. The request for approval along with documentation on the burial vault is attached hereto as Exhibit B.

As of August 2022, the request is still under review. HCDA staff have been regularly checking the status; however, there is currently no estimated time frame in which SHPD will complete its review.

### **III. DISCUSSION**

As the landowner of the Park, the HCDA is bound by restrictions, stipulations, and covenants contained in Section VI, Subsection H, Historic Preservation Covenant, and provisions H(i) through H(vii), of that certain Quitclaim Deed dated September 21, 2010, attached hereto as Exhibit C, to protect and maintain the historic properties on the premises in a manner that preserves the attributes that contribute to the eligibility of the said historic properties for the National Register of Historic Places.

KHLF's mission for the Park is stewardship and preservation of the historic properties and the cultural landscape of Kalaeloa, as well as to educate the community on cultural traditions and practices, advocate cultural awareness, and implement and maintain an authentic Hawaiian presence in the KCDD.

The HCDA recognizes that the cultural, historical, and educational activities provided to the public by KHLF at the Park are valuable to the community and believes KHLF should continue to manage the Park on HCDA's behalf under ROE 7-19 and eventually, under a Stewardship Agreement with the HCDA.

Although the Second, Third and Fourth Amendments noted that KHLF must complete all milestones prior to the further extension of the ROE, the HCDA notes that KHLF has satisfactorily completed seven of the eight milestones and has made a good faith effort to complete the remaining eighth milestone.

An extension to ROE 7-19 for one additional year will allow further time for SHPD to complete its review and make a determination on the burial vault to allow KHLF to complete the eighth milestone. During this time, KHLF would continue to maintain the Park to ensure historic and cultural sites do not fall into disrepair. HCDA and KHLF would also continue to finalize the language for the long-term Stewardship Agreement.

Upon completion of the final aforementioned milestone, HCDA staff will bring the long-term Stewardship Agreement before the Board for consideration.

#### **IV. RECOMMENDATION**

It is recommended that the Board Authorize the Executive Director to Amend the Term Established in the May 17, 2019 Right of Entry Agreement No. 7-19 between the Hawaii Community Development Authority and Kalaeloa Heritage and Legacy Foundation (KHLF), Which Granted a Right of Entry to KHLF, for Maintenance and Operation of the Kalaeloa Heritage Park, Located on Parcel No. 13073-D, 91-1940 Coral Sea Road, Kapolei, Hawaii, Tax Map Key No. (1) 9-1-013:069, and Extend the Term for an Additional Twelve (12) Months and undertake all tasks necessary to effectuate the purpose(s) of this For Action.

**Attachments:**

Exhibit A – ROE 7-19 as amended

Exhibit B – Burial Vault Documentation Request for SHPD Approval

Exhibit C – Quitclaim Deed dated September 21, 2010

Prepared By: Charlyn Ontai, Asset Management Specialist *Charlyn Ontai*

Reviewed By: Lindsey Doi, Asset Manager *LD*

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

This Fourth Amendment to the Revocable Right of Entry 7-19 ("**Fourth Amendment**") is executed this Oct 14, 2021, 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 "1"; and

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 "2"; and

WHEREAS, a second amendment to further extend the term of the ROE ("**Second Amendment**") was executed on May 14, 2020, a copy of which is attached hereto as Exhibit "3"; and

WHEREAS, a third amendment to further extend the term of the ROE ("**Third Amendment**") was executed on October 12, 2020, a copy of which is attached hereto as Exhibit "4"; and

WHEREAS, at its Board meeting held on October 6, 2021, the HCDA Board (the "**Board**") authorized the Executive Director to amend ROE 7-19 to extend the term for an additional twelve (12) months; and

WHEREAS, the Parties desire to further extend the term of the ROE for an additional twelve (12) 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:

**3. Term and Duration.** The term of this ROE shall commence at 12:00 a.m. on May 18, 2019 and terminate at 11:59 p.m. on November 17, 2022 ("**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.

## Fourth Amendment to ROE 7-19


2. The Parties acknowledge and agree that the Second and Third Amendments required the KHLF to complete the milestones, as set forth on Exhibit C to the Second Amendment, to the satisfaction of the HCDA prior to the Termination Date of the Second and Third Amendments respectively, before the HCDA would consider any further extensions of the ROE. The Parties further acknowledge and agree that the KHLF has not been able to complete Milestone 8 due to circumstances beyond its control. Accordingly, the Parties agree that the KHLF has until November 17, 2022 to complete Milestone 8 to the satisfaction of the HCDA. The HCDA will not entertain further options to extend the current term of the ROE unless Milestone 8 is met by the KHLF prior to November 17, 2022 or unless HCDA agrees otherwise in its sole discretion.
3. This Fourth Amendment, upon execution of 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 Fourth Amendment except as stated herein. This Fourth 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. This Fourth 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 Fourth Amendment, all other terms and provisions of the ROE shall remain in full force and effect, unaltered and unchanged by this Fourth Amendment. Whether or not specifically amended by this Fourth 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 Fourth Amendment.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

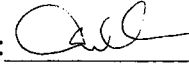
Fourth Amendment to ROE 7-19

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

**HAWAII COMMUNITY  
DEVELOPMENT AUTHORITY**

By:   
\_\_\_\_\_  
Deepak Neupane, P.E., AIA  
Executive Director

**KALAELOA HERITAGE AND  
LEGACY FOUNDATION**

By:   
\_\_\_\_\_  
Dwight Victor  
President

APPROVED AS TO FORM:


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

Exhibit "1"

REVOCABLE RIGHT OF ENTRY (ROE 7-19)

By this NONEXCLUSIVE REVOCABLE RIGHT OF ENTRY AGREEMENT (the "ROE") made and executed this NOV day of 17<sup>th</sup> 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 15<sup>th</sup> 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](mailto: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](mailto: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.

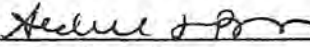
22. **Counterparts.** This ROE may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.

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  
Executive Director

**KALAELOA HERITAGE AND  
LEGACY FOUNDATION**

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

APPROVED AS TO FORM:

  
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



Exhibit "2"

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.

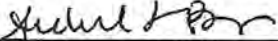
2. This First Amendment, when executed by the Parties, shall be effective as of the date stated above. All understandings and agreements between the Parties with respect to the ROE are merged into, or superseded by, this First Amendment. This First Amendment fully and completely expresses the agreement 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.

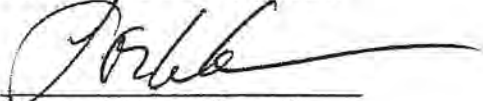
**HAWAII COMMUNITY  
DEVELOPMENT AUTHORITY**

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 17<sup>th</sup> 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 15<sup>th</sup> 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](mailto: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](mailto: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.

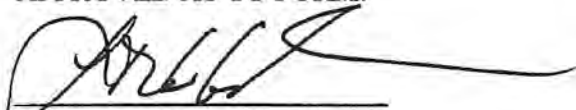
**HAWAII COMMUNITY  
DEVELOPMENT AUTHORITY**

By:   
Aedward Los Banos  
Executive Director

**KALAELOA HERITAGE AND  
LEGACY FOUNDATION**

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

APPROVED AS TO FORM:

  
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



Exhibit "3"

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 May 14, 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**"), a copy of which is attached hereto as Exhibit "A"; and

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:
  3. **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. Under this Second Amendment requires that the KHLF complete the milestones, as set forth in Exhibit "C" ("**Milestones**"), 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 consider entering into a Stewardship Agreement unless these milestones are met by KHLF prior to the Termination Date.
3. This Second Amendment, upon execution of 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

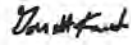


amended except by written agreement executed by each of the Parties hereto.


4. This 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 First 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:   
Garrett Kamemoto  
Interim Executive Director and CEO

**KALAELOA HERITAGE AND  
LEGACY FOUNDATION**

By:   
Dwight Victor  
President

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 17<sup>th</sup> day of NOV 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 15<sup>th</sup> 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](mailto: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](mailto: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



## Exhibit B

### 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.

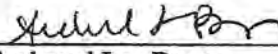
2. This First Amendment, when executed by the Parties, shall be effective as of the date stated above. All understandings and agreements between the Parties with respect to the ROE are merged into, or superseded by, this First Amendment. This First Amendment fully and completely expresses the agreement 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.

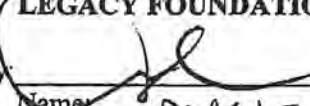
4. Except as amended and/or modified by this First Amendment, all other terms and provisions of the ROE shall remain in full force and effect, unaltered and unchanged by this First Amendment. Whether or not specifically amended by this First Amendment, all of the terms and provisions of the ROE are hereby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

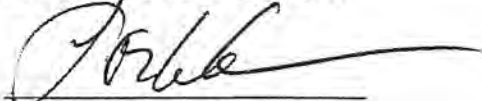
**HAWAII COMMUNITY  
DEVELOPMENT AUTHORITY**

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 C

Milestones Required to be Completed by KHLF to the Satisfaction of the HCDA Prior to the Termination Date of ROE 7-19

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 proposed Stewardship Agreement.
- Milestone 2: Develop a management plan specifying how the population of free-range animals (i.e., chickens, peacocks, etc.) is being managed by KHLF to ensure that the premises is not damaged or adversely impacted.
- Milestone 3: Maintain an updated monthly site inventory at all times, that includes all large equipment brought on premises (i.e., water totes/trucks, storage containers, wood chippers, equipment trailers, etc.).
- Milestone 4: Stripe/demarcate the parking and events area located within the maintenance yard to ensure that use and activities are conducted within the TMK boundaries of the ROE premises.
- Milestone 5: List of cultural, historical, and archaeological sites/features to be refurbished/restored, and specify how these cultural, historical, and archaeological sites/features will be restored
- Milestone 6: List all new native animal or plant species (e.g., pueo, etc.) for reintroduction on the Premises.
- Milestone 7: List the available grants that KHLF is pursuing to help fund maintenance activities on the Premises.
- Milestone 8: Submit copies of all building permits/approvals and related correspondence for all structures on premises.

Exhibit "4"

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

This Third Amendment to the Revocable Right of Entry 7-19 ("**Third Amendment**") is executed this Oct 12, 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**"), a copy of which is attached hereto as Exhibit "A"; and

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, a second amendment to further extend the term of the ROE ("**Second Amendment**") was executed on May 14, 2020, a copy of which is attached hereto as Exhibit "C";

WHEREAS, the HCDA General Board (the "**Board**") approved the delegation of authority to the Executive Director to extend any right of entry previously approved by the Board for an additional period of up to twelve (12) months during any Emergency Period in which the Governor of the State of Hawaii has issued a proclamation affecting Chapter 92, Hawaii Revised Statutes, at its Board meeting held on August 5, 2020;

WHEREAS, the Governor of the State of Hawaii has issued a proclamation affecting Chapter 92, Hawaii Revised Statutes, and the Executive Director desires to extend the term of the ROE for an additional twelve (12) months;

WHEREAS, the Parties desire to further extend the term of the ROE for an additional twelve 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:

**3. Term and Duration.** The term of this ROE shall commence at 12:00 a.m. on May 18, 2019 and terminate at 11:59 p.m. on November 17, 2021 ("**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. The name "Aedward Los Banos" is hereby removed from Section 18 of the ROE as follows:

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

3. The Parties acknowledge and agree that the Second Amendment required the KHLF to complete the milestones, as set forth on Exhibit C to the Second Amendment, to the satisfaction of the HCDA prior to the Termination Date of the Second Amendment before the HCDA would consider any further extensions of the ROE. The Parties further acknowledge and agree that the KHLF has not been able to complete Milestone 8 due to circumstances beyond its control. Accordingly, the Parties agree that the KHLF has until November 17, 2021 to complete Milestone 8 to the satisfaction of the HCDA. The HCDA will not entertain further options to extend the current term of the ROE unless Milestone 8 is met by the KHLF prior to November 17, 2021.
4. This Third Amendment, upon execution of 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 Third Amendment. This Third 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.
5. This Third 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.
6. Except as amended and/or modified by this Third Amendment, all other terms and provisions of the ROE shall remain in full force and effect, unaltered and unchanged by this Third Amendment. Whether or not specifically amended by this Third 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 Third Amendment.

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

**HAWAII COMMUNITY  
DEVELOPMENT AUTHORITY**

By: *Garett Kamemoto*  
Name: Garett Kamemoto  
Title: Interim Executive Director

**KALAELOA HERITAGE AND  
LEGACY FOUNDATION**

By: *Dwight Victor*  
Dwight Victor  
President

APPROVED AS TO FORM:

*Kelly Suzuka*  
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 17<sup>th</sup> 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 15<sup>th</sup> 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](mailto: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](mailto: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.

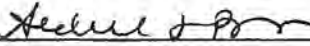
22. **Counterparts.** This ROE may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.

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  
Executive Director

**KALAELOA HERITAGE AND  
LEGACY FOUNDATION**

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

APPROVED AS TO FORM:

  
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



## Exhibit B

### 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.

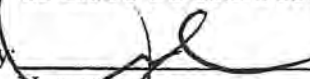
4. Except as amended and/or modified by this First Amendment, all other terms and provisions of the ROE shall remain in full force and effect, unaltered and unchanged by this First Amendment. Whether or not specifically amended by this First Amendment, all of the terms and provisions of the ROE are hereby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

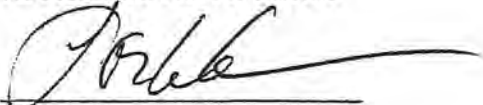
**HAWAII COMMUNITY  
DEVELOPMENT AUTHORITY**

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

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 May 14, 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**"), a copy of which is attached hereto as Exhibit "A"; and

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:
  3. **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. Under this Second Amendment requires that the KHLF complete the milestones, as set forth in Exhibit "C" ("**Milestones**"), 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 consider entering into a Stewardship Agreement unless these milestones are met by KHLF prior to the Termination Date.
3. This Second Amendment, upon execution of 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. This 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 First 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:   
Garrett Kamemoto  
Interim Executive Director and CEO

**KALAELOA HERITAGE AND LEGACY FOUNDATION**

By:   
Dwight Victor  
President

APPROVED AS TO FORM:

  
Deputy Attorney General



## Exhibit C

### Milestones Required to be Completed by KHLF to the Satisfaction of the HCDA Prior to the Termination Date of ROE 7-19

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 proposed Stewardship Agreement.
- Milestone 2: Develop a management plan specifying how the population of free-range animals (i.e., chickens, peacocks, etc.) is being managed by KHLF to ensure that the premises is not damaged or adversely impacted.
- Milestone 3: Maintain an updated monthly site inventory at all times, that includes all large equipment brought on premises (i.e., water totes/trucks, storage containers, wood chippers, equipment trailers, etc.).
- Milestone 4: Stripe/demarcate the parking and events area located within the maintenance yard to ensure that use and activities are conducted within the TMK boundaries of the ROE premises.
- Milestone 5: List of cultural, historical, and archaeological sites/features to be refurbished/restored, and specify how these cultural, historical, and archaeological sites/features will be restored
- Milestone 6: List all new native animal or plant species (e.g., pueo, etc.) for reintroduction on the Premises.
- Milestone 7: List the available grants that KHLF is pursuing to help fund maintenance activities on the Premises.
- Milestone 8: Submit copies of all building permits/approvals and related correspondence for all structures on premises.

**HAWAII COMMUNITY  
DEVELOPMENT AUTHORITY**

547 Queen Street, Honolulu, Hawaii 96813  
Telephone: (808) 594-0300 Fax: (808) 587-0299  
Web site: <http://dbedt.hawaii.gov/hcda/>

DAVID Y. IGE  
GOVERNOR

JASON OKUHAMA  
CHAIR

DEEPAK NEUPANE, P.E., AIA  
EXECUTIVE DIRECTOR

August 18, 2021

Dr. Alan Downer, Administrator  
State Historic Preservation Division  
601 Kamokila Boulevard, Room 555  
Kapolei, HI 96707

Dear Dr. Downer:

Re: Kalaeloa Heritage Park Burial Vault Located at 91-1940  
Coral Sea Road, Kapolei, Honouliuli Ahupuaa, Oahu,  
TMK: [1] 9-1-013: 069

Pursuant to Hawaii Revised Statutes (HRS) §6E-42, the Hawaii Community Development Authority (HCDA) submits for your review and comment: (1) this cover letter from the HCDA in its role as landowner of the above-referenced property; and (2) Documentation for the Burial Vault located at the Kalaeloa Heritage Park, prepared by the Kalaeloa Legacy and Heritage Foundation (KHLF).

The documents provided are intended to retroactively support KHLF's determination pursuant to HRS §6E-42 and Hawaii Administrative Rules (HAR) §13-284-3, that the construction of a burial vault at the Kalaeloa Heritage Park was done in accordance with State Historic Preservation Division (SHPD) requirements and guidelines.

The Kalaeloa Heritage Park (Park) is situated on an approximately 11-acre parcel (Parcel 13073-D) owned by the HCDA and located in the Honouliuli Ahupuaa. The KHLF has managed and maintained the Park to preserve and protect the historic and cultural sites thereon since 2011.

Numerous burials and human remains have been documented at the Park through prior archaeological surveys. At the direction of SHPD, KHLF constructed a burial vault at the Park to house the discovered remains in 2011. SHPD also later transferred 21 sets of iwi to KHLF for repatriation and reinterment in the burial vault.

Pursuant to HAR §13-284-5(b)(4), the HCDA retroactively submits this letter and the attached documentation to obtain the SHPDs concurrence that an adequate survey exists to sufficiently evaluate the significance of the historic properties located at the Park and that the existing burial vault meets all SHPD requirements.

We request that the SHPD provide a response letter to the HCDA confirming the SHPD's concurrence. If the SHPD does not concur, we ask that the SHPD provide guidance regarding

Dr. Downer  
August 18, 2021  
Page 2

the appropriate historic preservation review steps to obtain retroactive approval of the construction of the burial vault.

The HCDA delegates authority to Mr. Dwight Victor, KHLF President [email: [dvictor@khlfoundation.org](mailto:dvictor@khlfoundation.org); phone: (808) 282-3921] to consult with the SHPD regarding this matter. Should you have any questions, please contact Lindsey Doi, HCDA Asset Manager, at (808) 594-0328 or via email at [LindseyDoi.Leaverton@hawaii.gov](mailto:LindseyDoi.Leaverton@hawaii.gov).

Sincerely,



Deepak Neupane, P.E., AIA  
Executive Director

# **BURIAL VAULT DOCUMENTATION**

## **KALAELOA HERITAGE PARK**

**DRAFT**

**Updated 14 August 2021**

## History of the Park

### Land Transfer from Navy to HCDA

Parcel 13073-D is currently owned by the Hawai'i Community Development Authority (HCDA) after the US Government transferred the lands in 2010. The lands were identified as surplus by the 1990 Defense Base Closure and Realignment Act and the Naval Air Station (NAS) was recommended for closure in 1993 by the Base Closure and Realignment Commission (BRAC).

Section 106 of NHPA requires a federal agency to inventory and evaluate historic properties (i.e., cultural resources) for inclusion in the National Register of Historic Places (NRHP) and take into account the effect of an undertaking on a property that is listed or eligible for listing in the NRHP. The inventory of cultural resources at Naval Air Station Barbers Point (NASBP) was completed and the resources that were eligible for listing were identified.

As part of the State-preferred alternative and pursuant to Section 106 of NHPA, the State Historic Preservation Office (SHPO) concurred with the Navy's determination of "no adverse effect" related to the disposal of surplus lands with significant cultural resources providing inclusion of deed covenants. Per the Navy, and SHPO, deed covenants would ensure that cultural resources (i.e., archaeological sites and historic structures, etc.) potentially affected by proposed reuse would be treated appropriately.<sup>1</sup>

### Identification of Cultural Resources

Cultural resources at the Park were identified in Appendix A of the 1997 *"Excess and Surplus Areas of NAS Barbers Point: Recommendations for Specific Sites in Cultural Resource Management Plan: Naval Air Station, Barbers Point, Navy Retention Lands and Surplus and Excess Lands"* report by International Archaeological Research Institute, Inc. (IARII). Additional information was provided by the 1997 *"A Cultural Resource Inventory of Naval Air Station – Part I: Phase I Survey and Inventory Summary"* also by IARII. These reports identified the following:

Site No.	No. of Features	Description	NRC
1753	51+	Hawaiian habitation complex; three features contain human remains.	A, C, D

The Navy Final Environment Impact (FEI) report mentioned that the State-preferred alternative designated site 1753 for park and recreation uses which would mitigate any actions that might result in potential adverse impacts to significant cultural resources.<sup>2</sup>

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<sup>1</sup> Final Environment Impact Statement Disposal and Reuse of NAS Barbers Point

<sup>2</sup> FEI

**Historic Preservation Covenant**

The Quitclaim Deed by the US Government (GRANTOR), acting by and through the Department of the Navy, and HCD (GRANTEE) was completed in September 2010. Section H of this Quitclaim Deed outlined the following Historic Preservation Covenant:<sup>3</sup>

H. GRANTEE hereby covenants on behalf of itself, its successors and assigns, and every successor in interest to the Property hereby conveyed, to protect and maintain the historic properties on Lots 13073-B and 13073-D, described in the attached Exhibit "B" and depicted in the map attached as Exhibit "C" and are hereinafter referred to as the "Historic Properties", in a manner that preserves the attributes that contribute to the eligibility of the said historic properties for the National Register of Historic Places. Such attributes include association with significant events, information potential, design, setting, feeling, and views from, to, and across the historic properties. GRANTEE, its successors or assigns further agrees to the following:

- i) Construction, alteration, rehabilitation, renovation, demolition, disturbance of the ground surface, including but not limited to vegetation clearance, grading, or excavation, or other action to be undertaken on any portion of Lots 13073-B and 13073-D that would materially affect the integrity or the appearance of the attributes of the Historic Properties described in Exhibit "B" shall only be undertaken or permitted after consultation with the Hawaii State Historic Preservation Officer (SHPO) as provided by Hawaii Revised Statutes Chapter 6E (§ 6E-8). Actions that would affect views, including adding new structure site elements such as towers, fences, or obtrusive signs, may also be considered to materially affect the historic properties. The GRANTEE shall afford the designated SHPO an opportunity to review all proposed projects and provide recommendations regarding the treatment of known and potential subsurface historic properties.
- ii) The GRANTEE shall consult with the SHPO, and all interested parties as designated by the SHPO, prior to taking any proposed action on the Property. GRANTEE is provided notice that the Kapolei Hawaiian Civic Club (KHCC) has requested that the SHPO grant it status as an interested party for proposed actions on the Property, and also that KHCC has offered to assist GRANTEE with the protection and maintenance of cultural resources on the Property.
- iii) The GRANTEE shall take prompt action to secure the Historic Properties from vandalism and will be responsible for any stabilization that may be required to prevent further deterioration from human disturbance or exposure to natural elements. However, stabilization methods and materials must be approved by the SHPO prior to implementation.
- iv) The GRANTEE shall allow the SHPO access at all reasonable times and upon reasonable advanced notice to GRANTEE to inspect the said historic Properties in

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<sup>3</sup> Quitclaim Deed

order to ascertain whether the GRANTEE is complying with the conditions of this historic preservation covenant.

- v) Failure of the United States of America to exercise any right of remedy granted under this covenant shall not have the effect of waiving or limiting the exercise by the United States of America of any other right or remedy or the invocation of such right or remedy at any other time.
- vi) In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the United States of America or the SHPO may, following reasonable notice to GRANTEE, institute any action to enjoin said violation or to require the restoration of the Historic Properties.
- vii) This covenant is binding on the GRANTEE in perpetuity. The restrictions, stipulations, and covenants contained herein shall be inserted by GRANTEE verbatim or by express reference in any deed or other legal instrument by which a fee simple interest or any lesser estate is conveyed in said Historic Properties or any part thereof.

## **About the Kalaeloa Heritage and Legacy Foundation**

The Kalaeloa Heritage and Legacy Foundation (KHLF), a 501(c)(3) community organization, was established in 2011 for the express purpose of preserving and protecting the cultural, historical, and archaeological landscape of Kalaeloa through the operation and maintenance of the Kalaeloa Heritage Park (Park). The Park is situated on an approximately 11-acre parcel, identified by Tax Map key 1-9-013:069 and Parcel 13073-D, in Kalaeloa.

### **Establishment of the KHLF**

In May 2010 the Kapolei Hawaiian Civic Club, through its participation in the Barbers Point NAS Redevelopment Commission, decided that it should pursue a lease agreement with the State of Hawaii for the properties designated as the Heritage Park (parcels 13073-B and 13073-D) in an effort to preserve and protect the historic/cultural sites.

In July 2010 the KHCC was advised by the HCDA Deputy Attorney General that it wanted a separate entity whose sole interest would be the Heritage Park. In January 2011 the KHCC started work on creating a new 501(c)(3) non-profit, the Kalaeloa Heritage and Legacy Foundation, to meet the State's request. In December 2012 the KHLF was granted 501(c)(3) status by the Internal Revenue Service.

### **Lease of Park Lands by KHLF**

In May 2011, the KHLF was granted revocable Right of Entry 7-11 to parcels 13073-B and 13073-D, identified by TMK 9-1-013:067 and 9-1-013:069 with a term of one year. Annual extensions of the ROE were granted by HCDA to the KHLF until 2015. In 2015 the KHLF was granted General Lease 15-05. This 40-year lease would allow the KHLF to pursue its mission. Unfortunately, issues related to an unpermitted stockpile on the premises of the Park resulted in this lease being terminated and the KHLF being granted Right of Entry 7-19.

## History of Human Burials at the Park

Tuggle reported in Phase I that the first extensive archaeological survey of the NAS area was conducted by the Bishop Museum in 1984-1985. Prior to this survey there were a few brief projects, with three of them concerning removal of human burials. The first documented burial removal from a sinkhole probably at site 1753 was in 1962 by a Bishop Museum archaeologist<sup>4</sup>. In 1991 a cultural resource management overview survey of NAS was created and then later updated in 1995. In 1994 the Navy started a program to complete the cultural resource inventory in anticipation of the development of a cultural resource management plan. An inventory survey to update the 1984 Bishop Museum survey was launched as Phase I and carried out by IARII in late 1994.<sup>5</sup>

### Burials Recorded at Site 1753 During Archaeological Review

An intensive transect survey was performed at Site 1753, denoted in Tuggle Phase I as area E6D. Following the Phase I survey, the data was reorganized on a geographic basis appropriate for Phase II survey and cultural resource management planning. New groupings, which were referred to as Cultural Resource Areas (CRAs) were created to identify locations recommended for further subsurface inventory testing.

Site 1753 was described by Tuggle as:

*A complex of Hawaiian habitation and agricultural structures. The site is notable for a well-preserved section of a paved Hawaiian trail, an unusual feature on the 'Ewa plain. Based on the 1994-1995 survey, the boundaries defined previously (Haun 1991) have been expanded to include additional features and sinkholes. Human skeletal remains are present.*<sup>6</sup>

A full review of human skeletal remains at NAS was prepared as a separate document, *Burial Treatment Plan: Closure of Naval Air Station, Barbers Point, O'ahu, Hawai'i* by Tuggle in 1996. Tuggle cautioned that there is a "high potential for discovery of additional human remains at NAS Barbers Point in the coastal dune areas, in untested sinkholes, and in sinkholes that have been covered by base construction."

According to Tuggle, site 1753 "is one of the largest complexes of Hawaiian features at NAS Barbers Point. It contains substantial and well preserved habitation and agricultural structures, as well as burials, with numerous areas of habitation deposits."<sup>7</sup>

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<sup>4</sup> Site 1753 correlates to parcel 13703-D

<sup>5</sup> Tuggle Phase I

<sup>6</sup> Tuggle Phase I

<sup>7</sup> Tuggle Phase II



As part of the statement of work, any structure that could possibly contain Hawaiian burials was partially dismantled and then reconstructed. As a result of this process, human remains were found in a platform mound and within several sinkholes.

*Three of the burial locations are clustered in the northern portion of Site 1753. These remains include a single tooth associated with a mound at the base of a sinkhole (F51), bones of a subadult on the floor of an unmodified sink (F2), and an adult femur found within a pile of rocks recently removed from a circular platform mound (F7).<sup>8</sup>*

Table 9. Sites with a 19th Century Hawaiian Component: Recommendations for NRHP Eligibility.

Site No.	Hawaiian		Burial	Description	National Register Criteria					Mitigation Recommendation			Notes
	19th	Hwn			A	B	C	D	NE	DR	P	NFA	
1719	?	5 (1)		Hwn habitation complex				x			x		
1736	?	19 (18)		Hwn hab/ag complex/kuleana?	x		x	x				x	
1737	?	18 (5)		Hwn habitation/ag complex/kuleana?	x		x	x				x	
1753	?	51 (5+)	3	Hwn habitation complex	x		x	x				x	
2220	?	x	x	Dune site	x			x				x	

**Cultural Periods:** 19<sup>th</sup>=19<sup>th</sup> C. Hawaiian component; Hwn=Hawaiian component, number of features (plus mounds in parentheses).

**National Register Criteria:** recommendations for eligibility under Criteria A, B, C, and D; NE=recommended not eligible.  
 Note: Criteria are those identified by the investigator(s).

**Mitigation Recommendations:** DR=data recovery if necessary; P=preservation; NFA=no further action.

Note: Recommendations are made for each site in general; special recommendations for specific features are in the "Note" column.

These recommendations do not address features with human remains; these recommendations will be presented in the Burial Treatment Plan.

Figure 1 - Recommended NRHP eligible sites from Tuggle Phase I

<sup>8</sup> Tuggle Phase II

Table 15. Sites/Features with Human Skeletal Remains.

Site/Fea No.	Site Description	Location of Remains	Burial	Isolated Bone	Note on skeletal remains	Reference
1721-A	Hawaiian habitation	sinkhole deposit		x	fragments of adult, child, and infant	O'Hare et al. 1996:37
1723-C	Hawaiian habitation	sinkhole floor	x		infant or juvenile	Haun 1991:47
1723-E	Hawaiian habitation	sinkhole floor	x		humerus, radius, of adult male	Haun 1991:47
1724-19	Hawaiian habitation	sinkhole floor	x		fragments of 1 subadult, plus infants	Tuggle 1997:101
1724-54	Hawaiian habitation	sinkhole deposit	?	?	fragments of adult, possible more	Tuggle 1997:101
1724-E	Hawaiian habitation	sinkhole floor	x		subadult cranium	Haun 1991:47
1725-L	Hawaiian habitation	burial pit in habitation floor	x		premature infant	O'Hare et al. 1996:71
1726-02	Hawaiian habitation	sinkhole cavity	x		extended adult burial, undisturbed	Tuggle 1997:101
1735-C	Hawaiian habitation	burial pit in habitation floor	x		infant	O'Hare et al. 1996:139
1752-22	Hawaiian habitation	deposit		x	2 teeth	Wickler and Tuggle 1996:163
1752-41	Hawaiian habitation	sinkhole floor	x		fragments of 2 adults, 1 subadult	Wickler and Tuggle 1996:163
1753-02	Hawaiian habitation	sinkhole floor	x		subadult fragments	Wickler and Tuggle 1996:163
1753-07	Hawaiian habitation	structure rubble		x	adult femur	Wickler and Tuggle 1996:163
1753-51	Hawaiian habitation	sinkhole floor w/ stone mound	in mound?	x	tooth	Wickler and Tuggle 1996:163
2220	Dune site	burial pit	x		adult	Haun 1991
5094-C	Sinkhole complex	sinkhole deposit		x	tooth	O'Hare et al. 1996:77
5098-A	Sinkhole complex/Hwn use	sinkhole floor		x	fragments of 1 adult, 1 subadult	O'Hare et al. 1996:78
5108-H	Sinkhole complex	sinkhole deposit		x	fragment, adult	O'Hare et al. 1996:215
5126	Dune	pit burial	x		adult male	Schilz and Landrum 1994

Figure 2 – Sites with human skeletal remains from Tuggle Phase I

## Recommendation by SHPD to Construct Burial Vault

Sometime in 2010 – 2011, the inadvertent discovery of human remains was made at the Park and communicated to the State Historic Preservation Department (SHPD). Due to the size of the Park at that time (approximately 77 acres), the SHPD was concerned that further accidental discoveries of human remains would occur. As a result, SHPD staff recommended to KHLF staff that a secured facility be constructed on the Park grounds to hold any future discoveries of human remains. Unfortunately, there is no documentation of this recommendation by SHPD.

These remains were presumed to be ancient and no notification were made (as the lineal descendants were unknown). Since many of these remains were incomplete or fragments, they were not kept in situ like previous discoveries.

### **Construction of the Burial Vault**

Based upon the recommendation by SHPD, a burial vault was constructed on the Park premises to house these remains. The core of the burial vault is a disused steel bank vault (including door). The vault is faced with dry stacked coral rock, and the completed dimensions are approximately 10' L by 10' W by 3.5' H. The remains are wrapped in cloth and laid on a floor of sand taken from the Park.

The vault is located in a small grove of kou trees approximately 60' west of the Park kauhale and 20' south of Long Island Street. Coral rock covers the face of the sealed vault and a guardian pohaku sits on the top of the vault, facing west towards the leina ka'uhane at Kaena Point.

### **Pictures of the Burial Vault**



*Figure 3 - Picture of the burial vault, looking eastward*



Figure 4 - Picture of the burial vault, taken from Long Island St.



Figure 5 - Location of the burial vault indicated by yellow arrow

## Inventory of Iwi Reinterred into Vault

In 2011-2012, Kaleo Paik of SHPD transferred 21 sets of iwi to Shad Kane for repatriation.

### OAHU SHPD INVENTORY LIST OF 'IWI KUPUNA (Revised 6/25/09)

<u>Burial Case #</u>	<u>Bag/Box #:</u>	<u>Date of ID</u>	<u>Ahupuaa</u>	<u>TMK</u>	<u>Other Location Identifiers</u>	<u>Description (remains)</u>	<u>Assoc. Burial Artifacts</u>
UK-OA-02	Bag 1 of 1	6/8/00	Ewa	n/a	"CILHI Iroquois Pt."	CILHI 1988-114-I-01; several plastic bags of fragments contained within	n/a
99-OA-01	Bag 1 of 1	2/2/99	Ewa	n/a		cranial/jaw bone/long bone/vertebrae/other fragments	n/a
00-OA-04	Bag 1 of 1	5/3/00	Ewa	n/a	"Kaleiopuu Elem. School Village Park, Ewa - SC/EJ/HM/KK"	fragments	n/a
07-OA-21	4 bgas	6/28/07	Ewa	(1) 9-1-012:025	Homeless digging an imu discovered upper half of skeleton and various bone fragments	skull, teeth, ribs, long bones, vertebrae, and bone fragments	n/a
09-OA-11	Box 1 of 1	2/10/09	Ewa	n/a	Sent via mail to Kapolei office, note syas from Kalaeloa	skull	n/a
08-OA-23	Bag 1 of 1	8/29/08	Ewa	n/a	Iroquois Point erosion	fragments	n/a
08-OA-24	Bag 1 of 1	9/3/08	Ewa	n/a	Iroquois Point Erosion	fragments	n/a
09-OA-15	Bag 1 of 1	3/23/09	Ewa	n/a	Iroquois Point erosion	fragments	n/a
04-OA-05	Bag 1 of 1	3/12/04	Honouliuli	n/a	n/a	mandible fragments "Friday 3/12/04 MJ/KK Honouliuli ID SC 19 Mar 04"	n/a
04-OA-06	Bag 1 of 1	3/12/04	Honouliuli	9-1-017:061	Notes: ID form says ID date 3/12/04 but bag says 4/1/04	fragments	n/a

Figure 6 - Inventory of iwi from SHPD

As a Chiefly 'Ewa lineal descendant and former member of the O'ahu Island Burial Council, Shad had previously worked with the SHPD to return iwi to the regions of Makakilo, Barbers Point NAS, Kalaeloa Industrial Park, and the area surrounding Nānākuli. Shad exercised his discretion to reinter these remains into the burial vault on the Park grounds.

### Process Utilized by KHLF to Interr Remains

When the fragmentary remains and iwi from SHPD were interred into the vault, KHLF staff performed traditional protocol/ritual with the following prayers:

- Noho Ana Ke Akua
- E Ulu
- Na Aumakua

The area surrounding the burial vault and the vault itself is treated with the respect afforded to any burial. It is not a part of any organized site tour and visitors would only be brought to the edge of the kou grove upon request.

## Procedure for Handling Future Discovery of Human Remains

The following procedure for handling inadvertent discoveries of human remains is a part of the draft KHP Management Plan, which is currently being developed by the KHLF in conjunction with IARII and UHWO.<sup>9</sup>

1. All activity in the vicinity of the discovery of bone remains should immediately stop, and reasonable efforts made to protect the remains from disturbance or damage.
2. A KHLF professional archaeological partner and/or the SHPD should be immediately requested to assess if the remains are human, and to advise on appropriate actions, including notification to the O'ahu Island Burial Council.
3. Until the assessment can be made, the remains should be kept in situ, and covered with a thin layer of loose sand or soil and fabric or plywood to protect them from adverse environmental conditions (e.g., winds and direct sunlight) or human-caused damage.
4. If the remains are determined to be human, the instructions of the SHPD shall be followed. Remains found may be either intentionally excavated or preserved in place.

If recovery of the remains is determined by SHPD to be a necessary action then that recovery will be conducted by a professional archaeologist or osteologist using appropriate standards of conduct, respect, and sensitivity. Recovery of any remains will be performed by hand excavation only and include recordation of the following information:

- a. basic quantitative data (e.g., skeletal element, completeness, and number)
- b. inferences regarding sex and age; and if applicable,
- c. the form, fill, and relative position of the burial pit and any other associated features and/or artifactual material;
- d. recording of the remains should not involve photography.

This information should be presented in a written report that will be placed on file in the Heritage Park Archaeology Archive. The vault for reburial of human remains is available for secure reburial.

5. If the remains are determined to not be human, a determination should be made if they are part of an archaeological feature, and if so, the procedures under SOP for inadvertent discovery of previously unrecorded archaeological features should be followed.
6. Activities can resume in the area upon approval given by SHPD.

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<sup>9</sup> IARII, UHWO, KHLF.

## References

International Archaeological Research institute, Inc. (IARII). 1997. *A Cultural Resource Inventory of Naval Air Station – Part I: Phase I Survey and inventory Summary.*

International Archaeological Research institute, Inc. (IARII). 1997. *A Cultural Resource Inventory of Naval Air Station – Part II: Phase II Inventory Survey of Selected Sites.*

Department of the Navy. 1999. *Final Environmental Impact Statement for the Disposal and Reuse of Naval Air Station Barbers Point, Hawaii.*

IARII, UHWO, KHLF. 2021. *KHP Management Plan.*

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ASSISTANT REGISTRAR, LAND COURT  
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(Bureau of Conveyances)

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Hawaii Community Development Authority 461 Cooke Street Honolulu, Hawaii 96813 Attention: Anthony J.H. Ching	
Tax Map Key No.	THIS DOCUMENT COMPRISES _____ PAGES

**QUITCLAIM DEED**

This Quitclaim Deed ("Deed") is made this 21st day of Sept, 2010, by and between the **UNITED STATES OF AMERICA ("GRANTOR")**, acting by and through the Department of the Navy, with a principal office at 1455 Frazee Road, Suite 900, San Diego, California 92108, and the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY, a body corporate and a public instrumentality of the State of Hawaii ("GRANTEE")** whose address is 461 Cooke Street, Honolulu, Hawaii 96813.

**RECITALS**

**WHEREAS**, by authority contained in Section 2855 of the FY 2010 National Defense Authorization Act, (Public Law 111-84), the Secretary of the Navy is authorized to convey all right, title, and interest of the Unites States to certain portions of the former Naval Air Station, Barbers Point to the GRANTEE; and

**WHEREAS**, GRANTEE, has requested conveyance, without consideration, to a portion of the former Naval Air Station Barbers Point, described below, comprising approximately 87.426 acres of land, more or less, together with certain improvements thereon and adjacent thereto (the "Property").

**WHEREAS**, on September 30, 2008, GRANTOR executed a Finding of Suitability to Transfer (FOST) for Parcels 13073-B and 13073-D. Also on June 8, 1999, GRANTOR executed a FOST for Parcel 13126-B, and on August 5, 2009, GRANTOR



executed a FOST Addendum for the Parcel, these documents set forth the basis for GRANTOR's determination that the Property is suitable for transfer pursuant to 42 U.S.C. Section 9620(h)(3).

**NOW, THEREFORE**, GRANTOR, in consideration of the foregoing, the covenants, conditions and restrictions hereinafter contained and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby remise, release and forever quitclaim to GRANTEE all of GRANTOR's right, title and interest in the Property, more particularly described as:

- I. Lot 13073-B, consisting of an area of 65.356 acres, more or less, as shown on Map 971, as set forth in Land Court Order No. 135167, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, being a portion of the property covered by Transfer Certificate of Title No. 529,664, issued to GRANTOR, hereinafter referred to as the "Property", along with rights of ingress and egress as noted on Land Court Order No. 135167.
- II. Lot 13073-D consisting of an area of 11.501 acres, more or less, as shown on Map 971, as set forth in Land Court Order No. 135167, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, being a portion of the property covered by Transfer Certificate of Title No. 529,664, issued to GRANTOR, hereinafter referred to as the "Property", along with rights of ingress and egress as noted on Land Court Order No. 135167.
- III. Lot 13126-B consisting of an area of 10.569 acres, more or less, as shown on Map 1006, as set forth in Land Court Order No. 138482, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, being a portion of the property covered by Transfer Certificate of Title No. 532,712, issued to GRANTOR, hereinafter referred to as the "Property", along with rights of ingress and egress as noted on Land Court Order No. 138482.

**IV. TOGETHER WITH:**

All of GRANTOR's right, title and interest in and to buildings, improvements, and utilities located on the Property and all rights, tenements, hereditaments, and appurtenances thereonto belonging, excepting those improvements and interests hereinafter specifically excluded, excepted or reserved, all as set forth in Section V below.

**V. EXCEPTING AND RESERVING:**

**A.** Excepting and reserving unto GRANTOR, its successors and assigns, all of the following utility facilities, easements, rights-of-way and other rights and entitlements.

i. Those certain existing electrical transformers (excluding transformer pads and fencing), poles, wire lines, guy wires, anchors and/or underground wire lines, ducts, manholes, and such other appliances and equipment located within the Property, providing electrical service to GRANTEE, which extend from the boundaries of the Property up to the appropriate electrical metering point of each building located on the Property, as said "metering point" is defined in the Hawaiian Electric Company, Inc. ("HECO") "Electric Service Installation Manual" effective on the date of this conveyance and regardless of whether or not those meters have actually been installed; TOGETHER WITH perpetual easements and rights-of-way over, across, under, and through the Property for the operation, maintenance, repair, replacement, and/or removal of said existing electric facilities located on the Property. GRANTOR reserves the right to unilaterally relinquish said perpetual easements, with notice to GRANTEE.

ii. Those certain electrical transformers (excluding transformer pads and fencing), poles, wire lines, guy wires, anchors and/or underground wire lines, ducts, manholes, and other appliances and equipment located within the Property that are utilized to provide electrical service for lots other than the Property, the locations of which are approximately shown on HECO Drawing No. C4633, dated July 7, 1999, entitled "Barbers Point NAS Electrical Easements, Quad 7, 46KV, 12KV & 4KV Lines", on file at HECO's office at 900 Richards Street, Honolulu, Hawaii 96813, and identified as "Easements for Existing Electrical Facilities", (hereinafter referred to collectively as "existing electric utility facilities"); TOGETHER WITH perpetual easements and rights-of-way over, across, under, and through the Property for the operation, maintenance, repair, replacement, and/or removal of said existing electric utility facilities located on the Property; and GRANTOR further hereby reserves for itself or any person or entity designated by GRANTOR, including HECO, the right to survey the land areas beneath said existing electric utility facilities as may be considered by GRANTOR to be reasonably necessary for the transmission and distribution of electricity for light, power and/or communications and control circuits for the use of occupants of the Property and other lots. GRANTOR's right to survey said land areas includes the right to create metes and bounds maps and/or descriptions of specifically delineated easement areas and the right to designate said easements on Land Court map(s) over, across, under and through the Property for electric utility purposes, upon notice to, but without requirement for joinder or and consent of GRANTEE or any person holding under or through GRANTEE. Said consent should not be unreasonably withheld or delayed. GRANTOR further reserves the right to cancel the perpetual easements and rights-of-way reserved hereunder in this paragraph and to grant new specifically delineated easements to HECO or any other entity, through the execution of a grant of easement document, upon notice to but without requirement for joinder or and consent of GRANTEE so long as it does not unreasonably inhibit GRANTEE's use of the property or good faith efforts have otherwise been made by GRANTOR to locate the easement in

a place that will not unreasonably inhibit GRANTEE's use of the property. Notwithstanding the foregoing, if the Land Court or another court of competent jurisdiction requires a document to be executed by GRANTEE in order for GRANTOR to file Land Court petitions to designate said easements, to file the Cancellation and Grant of Easement, or to otherwise effectuate the grant of said easements, GRANTEE hereby appoints GRANTOR as GRANTEE's attorney-in-fact solely for the purpose of (1) filing all Land Court petitions necessary or appropriate to designate said easements on any Land Court map(s), (2) granting such easements, and (3) doing all other things necessary to effectuate such grants. This power-of-attorney is coupled with an interest and is irrevocable.

In addition, if the Land Court or another court of competent jurisdiction, notwithstanding the rights above, still requires GRANTEE to execute a document in order for GRANTOR to file Land Court petitions to designate easements, to file such grant of easements or otherwise to effectuate said grant, then by acquiring any interest in the Property, GRANTEE and each person holding under or through GRANTEE, agrees to cooperate, join in and/or consent to GRANTOR's exercise of its rights hereunder if so requested by GRANTOR, which cooperation, joinder(s) or consent(s) shall not be unreasonably withheld, conditioned or delayed. Such persons further agree that if the requested cooperation, joinder or consent is not forthcoming within a reasonable period of time not to exceed forty-five (45) days, GRANTEE and such persons holding under or through GRANTEE shall be deemed to have irrevocably waived any right to consent to and/or join in the matter for which the consent or joinder was sought so long as the easement does not unreasonably inhibit GRANTEE's use of the property or good faith efforts have otherwise been made by GRANTOR to locate the easement in a place that will not unreasonably inhibit GRANTEE's use of the property.

**B. FURTHER EXPRESSLY RESERVING AND EXCEPTING,** HOWEVER, all right, title, and interest in and to the following items, including without limitation, the exclusive right to transfer, sell, convey, grant, modify, cancel or terminate the same. Notwithstanding anything herein to the contrary, the following items are expressly excluded from any conveyance effected under this instrument, and GRANTEE shall have no right to own, use or enjoy any of the following items:

i. Easement "3697," affecting Lot 2488-A-2, as shown on Map 632 of Land Court Application No. 1069, and as set forth by Land Court Order no. 110870, filed March 9, 1993, designated for the purpose of a runway safety clear zone, and granted to GRANTOR, acting through the Department of the Navy, as set forth in that certain Grant dated April 30, 1993, filed as Land Court Document No. 2020854, and noted on Certificate of Title No. 504038.

ii. Easement "1360," affecting Lots 425-C-1, 2488-A, 2489-A, 2529, and 3168, as shown on Map 373 of Land Court Application No. 1069, and as set forth by Land Court Order no. 72368, filed January 11, 1985, designated for the purpose of flight clearance glide plane, and as set forth in that certain Declaration of Taking, dated August 23, 1979, filed as Land Court Document No. 1270954 and noted on Certificate of Title No. 504038.

iii. Easement "540," affecting Lot 1136-D-1 and Lot 1909, and Easement "541," affecting Lots 1136-D-1, 247, 1170, 1172, and Lot 1909, as shown on Map 185 of Land Court Application 1069, and as set forth by Land Court Order No. 27855, filed December 6, 1967, designated for the purpose of aircraft flight clearance purposes, and granted to GRANTOR, as set forth in that certain Grant dated May 7, 1968, filed as Land Court Document No. 449065 and noted on Certificate of Title No. 85671.

iv. Easement "2263," affecting Lots 1909-B and 3805-A, as shown on Map 487 of Land Court Application 1069, and as set forth by Land Court Order No. 95131, filed September 18, 1989, and granted to GRANTOR, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685726 and noted on Certificate of Title No. 85671.

v. Easement "2277," affecting Lots 220-A, 221, and 298, as shown on Map 496 of Land Court Application 1069, and as set forth by Land Court Order No. 95854, filed November 14, 1989, and granted to GRANTOR, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685727, and noted on Certificate of Title No. 15790.

vi. Easement "2280," affecting Lot 298, as shown on Map 496 and Easement "2281," affecting Lots 178, 316, 317, 318, and 319, as shown on Map 496, of Land Court Application 1069, and as set forth by Land Court Order No. 95854, filed November 14, 1989, and granted to GRANTOR, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685728, and noted on Certificate of Title No. 15790.

vii. Easement "2279," affecting Lot 298, as shown on Map 496 of Land Court Application 1069, and as set forth by Land Court Order No. 95854, filed November 14, 1989, and granted to GRANTOR, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685737, and noted on Certificate of Title No. 15790.

viii. Easement "2262," affecting Lots 237-A and 2695, as shown on Map 486 of Land Court Application 1069, and as set forth by Land Court Order No. 95159, filed September 18, 1989, and granted to GRANTOR, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685738, and noted on Certificate of Title No. 15790.

ix. Easement "2278," affecting Lot 298, as shown on Map 496 of Land Court Application 1069, and as set forth by Land Court Order No. 95854, filed November 14, 1989, and granted to GRANTOR, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685739, and noted on Certificate of Title No. 15790.

x. Perpetual flight clearance easement, in, over, and above Lot 204-A-2-A-2, as shown on Map 217 of Land Court Application 1069, as set forth by Land Court Order No. 35554, filed July 19, 1972, and Lot 208, as shown on Map 34 of Land Court Application 1069, as set forth by Land Court Order no. 5852, filed July 3, 1944, reserved

to GRANTOR in that certain Quitclaim Deed dated August 1, 1974, filed as Land Court Document No. 693093, and noted on Certificate of Title No. 170393.

xi. Right of access, including but not limited to, right to transport, haul and tow aircraft over and along the existing road in Lot 208, as shown on Map 34 of Land Court Application 1069, as set forth by Land Court Order no. 5852, filed July 3, 1994, reserved to GRANTOR in that certain Quitclaim Deed dated August 1, 1974, filed as Land Court Document No. 693093, and noted on Certificate of Title No. 170393, and the right to control public and private vehicular traffic on said road during these aircraft transport operations.

xii. Easement 10070 affecting Lot 13073-B was designated, and recorded as Land Court Order No. 178423 on Transfer Certificate of Title 529664 on March 11, 2009 as shown on Land Court Application 1069 Map 1453.

xiii. Easement 6782 affecting Lot 13126-B was designated and recorded as Land Court Order No. 135276 on Transfer Certificate of Title 121822 on May 15, 1999 as shown on Land Court Application 1069 Map 969.

xiv. Easement 6936 affecting Lot 13126-B was designated and recorded as Land Court Order No. 138482 on Transfer Certificate of Title 532712 on March 2, 2000 as shown on Land Court Application 1069 Map 1006.

xv. Lots 13073-B and 13073-D, are subject to Reservation as contained in that certain document filed as Land Court Document No. 87883.

**VI. SUBJECT TO THE FOLLOWING NOTICES, COVENANTS, CONDITIONS AND RESTRICTIONS,** which shall be binding upon and enforceable against GRANTEE, its successors and assigns, in perpetuity:

**A.** GRANTEE hereby accepts conveyance of the Property subject to all covenants, conditions and restrictions, easements, rights-of-way, reservations, rights, agreements, encumbrances of record pertaining to the Property.

**B.** GRANTEE covenants that the Property will be used for public benefit as required for a conveyance made without consideration under Section 2855 of the FY 2010 National Defense Authorization Act, (Public Law 111-84).

**C. FOST NOTIFICATIONS**

i. The FOSTs and FOST Addendum reference environmental conditions on the Property and on other properties not subject to this Deed. The FOST sets forth the basis for GRANTOR's determination that the Property is suitable for transfer. GRANTEE acknowledges that it has been made aware of the notifications contained in the FOST and FOST Addendum, that GRANTEE has received copies of the FOST and FOST Addendum, and that all documents referenced therein have been made available to GRANTEE for inspection and reproduction.

ii. GRANTEE is hereby notified that arsenic, atrazine, bis(2-ethylhexyl) phthalate, 4,4'-DDE (commonly, "dichlorodiphenyldichloroethylene," or 1,1-bis-(4-chlorophenyl)-2,2-dichloroethene), 4,4'-DDT (commonly, "dichlorodiphenyl-trichloroethane" or 1,1-bis-(4-chlorophenyl)-2,2,2-trichloroethane), lead, lindane, and thallium were released in the Regional Groundwater System (POI-49), which lies beneath the property. The chemicals detected were at concentrations that did not require a response action.

**D. Property Covered by Notice, Description, Access Rights, and Covenants Made Pursuant to Section 120(h)(3)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)):** For the Property, GRANTOR provides the following notice, description, and covenants and retains the following access rights:

i. **Notices Pursuant to Section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(I) and (II)):** Pursuant to section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(I) and (II)), available information regarding the type, quantity, and location of hazardous substances and the time at which such substances were stored, released, or disposed of, as defined in section 120(h), of the act, is provided in Exhibit A, attached hereto and made a part hereof.

ii. **Description of Remedial Action Taken, If Any, Pursuant to Section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(III)):** Pursuant to section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(III)), a description of the remedial action taken, if any, on the Property is provided in Exhibit A, attached hereto and made a part hereof.

iii. **Covenant Pursuant to Section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(ii) and (B)):** Pursuant to section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(ii) and (B)), GRANTOR warrants that:

(a) all remedial action necessary to protect human health and the environment with respect to any hazardous substance identified pursuant to section 120(h)(3)(A)(i)(I) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 remaining on the Property has been taken before the date of this Deed; and

(b) any additional remedial action found to be necessary after the date of this Deed shall be conducted by GRANTOR.

iv. **Access Rights Pursuant to Section 120(h)(3)(A)(iii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(iii)):**

GRANTOR retains and reserves a perpetual and assignable easement and right of access on, over, and through the Property, to enter upon the Property in any case in which a remedial action or corrective action is found to be necessary on the part of GRANTOR, without regard to whether such remedial action or corrective action is on the Property or on adjoining or nearby lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, testpitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for GRANTOR to meet its responsibilities under applicable laws and as provided for in this Deed. Such easement and right of access shall be binding on GRANTEE and its successors and assigns and shall run with the land.

In exercising such easement and right of access, GRANTOR shall provide GRANTEE or its successors or assigns, as the case may be, with reasonable notice of GRANTOR's intent to enter upon the Property and exercise GRANTOR's rights under this clause, which notice may be severely curtailed or even eliminated in emergency situations. GRANTOR shall use reasonable means to avoid and to minimize interference with GRANTEE's and its successors' and assigns' quiet enjoyment of the Property. At the completion of work, the work site shall be reasonably restored. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to GRANTOR. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due GRANTEE, nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by GRANTOR.

In exercising such easement and right of access, neither GRANTEE nor its successors and assigns, as the case may be, shall have any claim at law or equity against GRANTOR or any officer or employee of GRANTOR based on actions taken by GRANTOR or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this clause: Provided, however, that nothing in this paragraph shall be considered as a waiver by GRANTEE and its successors and assigns of any remedy available to them under the Federal Tort Claims Act.

**E. Floodplain Notification.** To the extent that any portion of the Property lies within a floodplain as defined in section 6(c) of Executive Order No. 11988, Floodplain Management, dated May 24, 1977, construction, development and other uses of that portion of the Property could be restricted by the standards and criteria of the National Flood Insurance Program of the Federal Emergency Management Agency, or other applicable regulations.

**F. No Hazard to Air Navigation.** GRANTEE covenants for itself, its successors and assigns, that prior to any construction or alteration on the Property,

GRANTEE will obtain a determination of no hazard to air navigation from the Federal Aviation Administration in accordance with Code of Federal Regulations, title 14, part 77, entitled "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958, as amended.

**G. Non-Discrimination.** GRANTEE covenants for itself, its heirs, successors and assigns, and every successor in interest to the Property, or any part thereof, that GRANTEE and such heirs, successors and assigns shall not discriminate upon the basis of race, color, religion, or national origin in the use, occupancy, sale or lease of the Property or in such parties' employment practices conducted thereon. This covenant shall not apply, however, to the lease, or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises primarily used for religious purposes. GRANTOR shall be deemed a beneficiary of this covenant without regard to whether it remains an owner of any land or interest therein in the locality of the Property and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

**H. Historic Preservation Covenant.** GRANTEE hereby covenants on behalf of itself, its successors and assigns, and every successor in interest to the Property hereby conveyed, to protect and maintain the historic properties on Lots 13073-B and 13073-D, described in the attached Exhibit "B" and depicted in the map attached as Exhibit "C" and are hereinafter referred to as the "Historic Properties", in a manner that preserves the attributes that contribute to the eligibility of the said historic properties for the National Register of Historic Places. Such attributes include association with significant events, information potential, design, setting, feeling, and views from, to, and across the historic properties. Grantee, its successors or assigns further agrees to the following;

i. Construction, alteration, rehabilitation, renovation, demolition, disturbance of the ground surface, including but not limited to vegetation clearance, grading, or excavation, or other action to be undertaken on any portion of Lots 13073-B and 13073-D that would materially affect the integrity or the appearance of the attributes of the Historic Properties described in Exhibit "B" shall only be undertaken or permitted after consultation with the Hawaii State Historic Preservation Officer (SHPO) as provided by Hawaii Revised Statutes Chapter 6E (§ 6E-8). Actions that would affect views, including adding new structure site elements such as towers, fences, or obtrusive signs, may also be considered to materially affect the Historic Properties. The GRANTEE shall afford the designated SHPO an opportunity to review all proposed projects and provide recommendations regarding the treatment of known and potential subsurface historic properties.

ii. The GRANTEE shall consult with the SHPO, and all interested parties as designated by the SHPO, prior to taking any proposed action on the Property. GRANTEE is provided notice that the Kapolei Hawaiian Civic Club (KHCC) has requested that the SHPO grant it status as an interested party for proposed actions on



the Property, and also that KHCC has offered to assist GRANTEE with the protection and maintenance of cultural resources on the Property.

iii. The GRANTEE shall take prompt action to secure the Historic Properties from vandalism and will be responsible for any stabilization that may be required to prevent further deterioration from human disturbance or exposure to natural elements. However, stabilization methods and materials must be approved by the SHPO prior to implementation.

iv. The GRANTEE shall allow the SHPO access at all reasonable times and upon reasonable advanced notice to GRANTEE to inspect the said Historic Properties in order to ascertain whether the GRANTEE is complying with the conditions of this historic preservation covenant.

v. Failure of the United States of America to exercise any right of remedy granted under this covenant shall not have the effect of waiving or limiting the exercise by the United States of America of any other right or remedy or the invocation of such right or remedy at any other time.

vi. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the United States of America or the SHPO may, following reasonable notice to GRANTEE, institute any action to enjoin said violation or to require the restoration of the Historic Properties.

vii. This covenant is binding on the GRANTEE in perpetuity. The restrictions, stipulations, and covenants contained herein shall be inserted by GRANTEE verbatim or by express reference in any deed or other legal instrument by which a fee simple interest or any lesser estate is conveyed in said Historic Properties or any part thereof.

**VII. THE CONDITIONS, RESTRICTIONS, RESERVATIONS, AND COVENANTS** set forth herein are a binding servitude on the Property, shall inure to the benefit of GRANTOR and GRANTEE and their respective successors and assigns, and will be deemed to run with the land in perpetuity.

**VIII.** The term "GRANTOR" shall mean GRANTOR and its successors and assigns.

**IX.** Except as otherwise provided herein, or as otherwise provided by law, GRANTEE acknowledges that it has inspected, is aware of, and accepts the condition and state of repair of the Property, and that the Property is conveyed "as is" and "where is" without any representation, promise, agreement, or warranty on the part of GRANTOR regarding such condition and state of repair, or regarding the making of any alterations, improvements, repairs or additions. Except for the environmental remediation which may be required to be undertaken by GRANTOR pursuant to Section VI(D)(iii)(b) above, GRANTEE further acknowledges that GRANTOR shall not be liable

for any latent or patent defects in the property except to the extent required by applicable law.

**X. LIST OF EXHIBITS.** The following exhibits are attached hereto and made a part hereof.

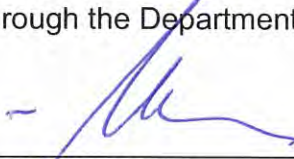
- A. Exhibit "A" Notice of Hazardous Substances
- B. Exhibit "B" Listing of Historic Properties
- C. Exhibit "C" Archeological Site Map

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, GRANTOR has caused this Deed to be executed in the name and on behalf of GRANTOR by its duly authorized officer on the day first above written.

**UNITED STATES OF AMERICA**

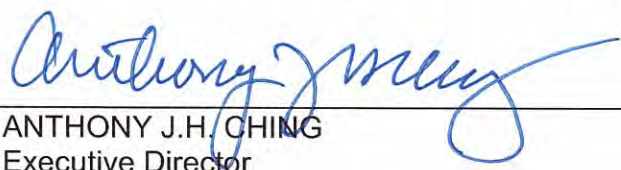
Acting by and through the Department of the Navy

BY:   
\_\_\_\_\_  
WILLIAM R. CARSILLO  
Real Estate Contracting Officer  
Base Realignment & Closure Program Management Office West

**ACCEPTANCE AND ACKNOWLEDGMENT:**

GRANTEE hereby accepts this Deed, acknowledges receipt of the documents described herein and agrees to be bound by all the agreements, covenants, conditions and restrictions contained herein.

**HAWAII COMMUNITY DEVELOPMENT AUTHORITY**

BY:   
\_\_\_\_\_  
ANTHONY J.H. CHING  
Executive Director

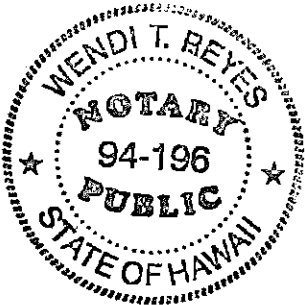
Date: 9/21, 2010

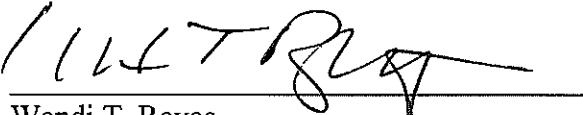
Approved as to form for GRANTEE by the  
Department of the Attorney General, State  
of Hawaii

BY:   
\_\_\_\_\_  
Diane Taira  
Deputy Attorney General

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

On this 21st day of September, 2010, before me personally appeared ANTHONY J.H. CHING, Executive Director of the HAWAII COMMUNITY DEVELOPMENT AUTHORITY, State of Hawaii, a body corporate and a public instrumentality of the State of Hawaii and that said instrument, this (19) page Quitclaim Deed dated September 21, 2010, was signed in the First Circuit of the State of Hawaii on behalf of said body corporate of the State of Hawaii and acknowledged said instrument to be the free act and deed of said body corporate of the State of Hawaii.



  
Wendi T. Reyes  
Notary Public, State of Hawaii  
My commission expires: 3/30/2014

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

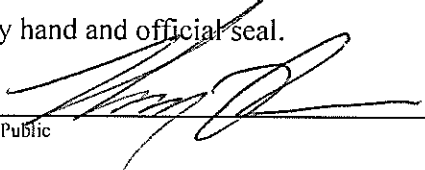
County of SAN FRANCISCO

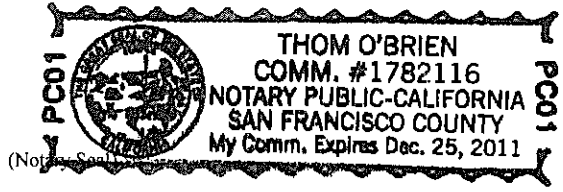
On 9/21/10 before me, THOM O'BRIEN, Notary Public,  
(Here insert name and title of the officer)

personally appeared WILLIAM R. CARSILO

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.  
  
  
 Signature of Notary Public



## ADDITIONAL OPTIONAL INFORMATION

### INSTRUCTIONS FOR COMPLETING THIS FORM

*Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

**DESCRIPTION OF THE ATTACHED DOCUMENT**

\_\_\_\_\_

(Title or description of attached document)

\_\_\_\_\_

(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

\_\_\_\_\_

(Additional information)

**CAPACITY CLAIMED BY THE SIGNER**

Individual (s)

Corporate Officer

\_\_\_\_\_

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other \_\_\_\_\_

Notice is hereby given that the information provided below contains a notice of hazardous substances that may have been stored, released, or disposed of on the property at Former Naval Air Station Barbers Point, and the approximate dates that such storage, release(s), or disposal took place. Title 40 Code of Federal Regulations 373.3(b) requires that the following statement be prominently displayed in this notice. The information in this notice is required under the authority of regulations promulgated under 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act ([CERCLA] or "Superfund") Title 42 of the United States Code 9620(h).

**Table A-1: Hazardous Substances Stored, Released, or Disposed of**

Building, POI Site, or Location	Hazardous Substance	CAS Number	Regulatory Synonym	RCRA Waste	Reportable Quantity (kg)	Estimated Quantity	Units	Dates of Storage, Disposal, or Release (if known)	Stored (S), Disposed of (D), or Released (R)	Action Taken
POI-49 Regional Groundwater System	Arsenic	7440-38-2	None	No	0.454	Unknown	NA	Unknown	R	No action required. A NFA decision was concurred with by EPA and DOH in 1999 as presented in the Record of Decision (Navy 1999).
	Atrazine	1912-24-9	NA	No	NA	Unknown	NA	Unknown	R	
	bis(2-ethylhexyl)phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester; DEHP;	No	45.4	Unknown	NA	Unknown	R	
	4,4'-DDE (dichlorodiphenyl-dichloroethylene)	72-55-9	Diethylhexyl phthalate	No	0.454	Unknown	NA	Unknown	R	
	4,4'-DDT (dichlorodiphenyl-trichloroethane)	50-29-3	DDE; 4,4'(prime)-DDE	No	0.454	Unknown	NA	Unknown	R	
	Lead	7439-92-1	Benzene, 1,1'-(2,2,2-trichloroethylene)bis (4-chloro-DDT); 4,4'(prime)-DDT.	No	4.54	Unknown	NA	Unknown	R	
	Lindane	58-89-9	None	No	0.454	Unknown	NA	Unknown	R	
	Thallium	7440-28-0	γ-BHC; Cyclohexane, 1,2,3,4,5,6-hexachloro-(1α,2α,3β,4α,5α,6β)-; Lindane(all isomers)	No	454	Unknown	NA	Unknown	R	
				None	No		Unknown	NA		

Source: Navy. 1999. "Record of Decision for No Action and Restricted Land Use Sites, Naval Air Station, Barbers Point, Oahu, Hawaii." April.

Notes

- CAS = Chemical Abstracts Service
- DOH = State of Hawaii Department of Health
- EPA = U.S. Environmental Protection Agency
- kg = kilogram
- NA = not available
- Navy = Department of the Navy
- NFA = no further action
- POI = point of interest
- RCRA = Resource Conservation and Recovery Act

Table 2: Notice of Hazardous Substances Stored, Disposed of, or Released

Building, IRP/POI Site, or Location	Hazardous Substance	CAS Number	Regulatory Synonym	RCRA Waste	Reportable Quantity (kg)	Estimated Quantity	Units	Dates of Storage, Disposal, or Release (if known)	Stored (\$), Disposed of (D), or Released (R)	Action Taken
POI-49 Regional Groundwater System	Arsenic	7440-38-2	None	No	0.454	Unknown	NA	Unknown	R	No action required.
	Atrazine	NA	NA	No	NA	Unknown	NA	Unknown	R	A NFA decision was concurred with by EPA and DOH in 1999 as presented in the Record of Decision (Navy 1999).
	bis(2-ethylhexyl)phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester; DEHP; Diethylhexyl phthalate	No	45.4	Unknown	NA	Unknown	R	
	4,4'-DDE (dichlorodiphenyldichloroethylene)	72-55-9	DDE; 4,4(prime)-DDE	No	0.454	Unknown	NA	Unknown	R	
	4,4'-DDT (dichlorodiphenyltrichloroethane)	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4) chloro-DDT; 4,4(prime)-DDT.	No	0.454	Unknown	NA	Unknown	R	
	Lead	7439-92-1	None	No	4.54	Unknown	NA	Unknown	R	
	Lindane	58-89-9	γ-BHC; Cyclohexane, 1,2,3,4,5,6-hexachloro-(1α,2α,3β,4α,5α,6β); Lindane(all isomers)	No	0.454	Unknown	NA	Unknown	R	
	Thallium	7440-28-0	None	No	454	Unknown	NA	Unknown	R	

Notes:  
 CAS = Chemical Abstract Service  
 DDE = dichlorodiphenyldichloroethylene  
 DDT = dichlorodiphenyltrichloroethane  
 DEHP = di(2-ethylhexyl)phthalate  
 DOH = State of Hawaii Department of Health  
 EPA = U.S. Environmental Protection Agency  
 IRP = Installation Restoration Program  
 kg = kilogram  
 NFA = no further action  
 NA = not applicable  
 Navy = Department of the Navy  
 POI = point of interest  
 RCRA = Resource Conservation and Recovery Act

## Exhibit "B"

## Historic Properties

Site No	Parcel(s)	No. Features	Description	NRHP Criteria
1752	13073-B	42+	Hawaiian habitation/agricultural complex; one feature contains human remains	D
5115	13073-B 13073-D	8	WWII sentry post, wall and defensive features	A,D
5117	13073-B	6	Sisal wall	D
5130	13073-B	x	Sinkhole Complex	D
5114	13073-D	x	WWII Plane Wreck	A, D
1753	13073-B 13073-D	51+	Hawaiian habitation complex; three features contain human remains	D

x = Features present but number unknown



EXHIBIT C

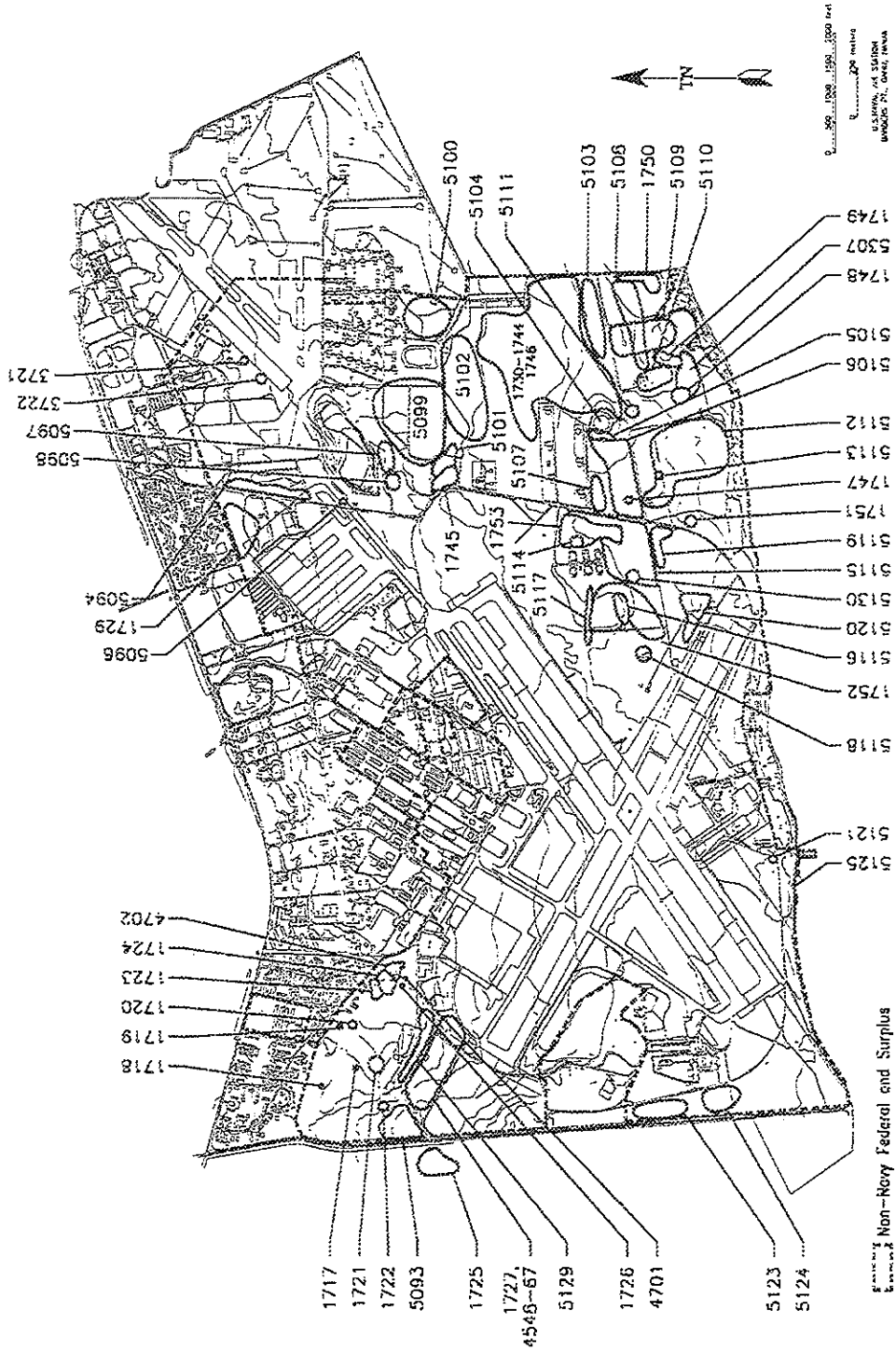


Figure E-2. Archaeological sites, non-Navy federal and surplus lands, NAS Barbers Point.

EXHIBIT C - 13073B AND 13073D

