

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

This Fifth Amendment to the Revocable Right of Entry 7-19 (“**Fifth Amendment**”) is executed this Oct 5, 2022, 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, the Parties executed a First Amendment to the ROE dated November 18, 2019 (“**First Amendment**”), which extended the term of the ROE for an additional six months through May 17, 2020 to allow more time to negotiate terms for a Stewardship Agreement. A copy of the First Amendment is attached hereto as Exhibit “2”; and

WHEREAS, at its regular Kalaeloa Authority meeting held on February 5, 2020, the HCDA Kalaeloa Board (the “**Kalaeloa Board**”) authorized the Executive Director to amend ROE 1-19 to extend the term for an additional six months to allow more time to negotiate appropriate milestones in anticipation of a Stewardship Agreement; and

WHEREAS, the Parties executed a Second Amendment to the ROE dated May 14, 2020 (“**Second Amendment**”), which further extended the term of the ROE for an additional six months through November 17, 2020 and added a list of milestones KHLF must complete prior to the execution of a Stewardship Agreement. A copy of the Second Amendment is attached hereto as Exhibit “3”; and

WHEREAS, on March 16, 2020, the Governor of the State of Hawaii issued an Emergency Proclamation affecting Chapter 92, Hawaii Revised Statutes, and both Parties desired to extend the term of the ROE for an additional twelve (12) months; and

WHEREAS, at the At-Large Authority meeting held on August 5, 2020, the HCDA At-Large Board (the “**At-Large Board**”) delegated authority to the Executive Director to extend any right of entry previously approved by the HCDA 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; and

WHEREAS, the Parties executed a Third Amendment to the ROE dated October 12, 2020 (“**Third Amendment**”), which further extended the term of the ROE for an additional 12 months through November 17, 2021. A copy of the Third Amendment is attached hereto as Exhibit “4”; and

WHEREAS, at its regular Kalaeloa Authority meeting held on October 6, 2021, the Kalaeloa Board authorized the Executive Director to amend ROE 1-19 to extend the term for an additional 12 months to allow more time for KHLF to complete the last milestone prior to the execution of a Stewardship Agreement;

WHEREAS, the Parties executed a Fourth Amendment to the ROE dated October 14, 2021 (“**Fourth Amendment**”) to further extend the term of the ROE for an additional 12 months through November 17, 2022 to allow more time for KHLF to complete the last milestone involving obtaining approval from the State Historic Preservation Division (“SHPD”) for the placement of the burial vault (former bank vault) containing iwi kūpuna inadvertently discovered on the property and iwi kūpuna transferred by the SHPD for repatriation (“Milestone No. 8”), a prerequisite to the execution of a stewardship agreement. A copy of the Fourth Amendment is attached hereto as Exhibit “5”; and

WHEREAS, the Parties desire to again further extend the term of the ROE for an additional 12-months because the KHLF has not yet completed the last milestone (Milestone No. 8) as the SHPD has not yet completed its review of the burial vault containing iwi kūpuna inadvertently discovered on the property and iwi kūpuna transferred by the SHPD for repatriation; and

WHEREAS, at its Board meeting held on September 7, 2022, the HCDA Kalaeloa Board (the “**Kalaeloa Board**”) authorized the Executive Director to amend ROE 7-19 to extend the term for an additional twelve (12) months to allow additional time for the SHPD to complete its review of the placement of the burial vault iwi kūpuna inadvertently discovered on the property and iwi kūpuna transferred by the SHPD for repatriation, and issue the approval requested by the KHLF to satisfy Milestone No. 8, a prerequisite to the execution of a stewardship agreement;

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, 2023 (“**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 Parties acknowledge and agree that the Second and Third Amendments required the KHLF to complete Milestone No. 8, 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 made a good faith effort to complete

Milestone No. 8 but has not yet been able to obtain approval from the SHPD for the burial vault due to circumstances beyond the KHLF's control.

3. This Fifth Amendment, upon execution of the Parties, shall be effective as of the date stated above. This Fifth 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 Fifth 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. This Fifth Amendment constitutes the entire agreement and understanding between the Parties and shall supersede any and all prior communications, representations or agreements, both verbal and written, between the Parties regarding the amendment of the ROE.

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

[SIGNATURES APPEAR ON FOLLOWING PAGE]


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

**HAWAII COMMUNITY
DEVELOPMENT AUTHORITY**

By: 

Craig K. Nakamoto
Executive Director

**KALAELOA HERITAGE AND
LEGACY FOUNDATION**

By: 

Dwight Victor
President

APPROVED AS TO FORM:



Deputy Attorney General

REVOCABLE RIGHT OF ENTRY (ROE 7-19)

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

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

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

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

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

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

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

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

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

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

Commercial General Liability:

\$1,000,000 per occurrence and \$2,000,000 in the aggregate
\$1,000,000 Completed Operations Aggregate Limit
\$1,000,000 Each Occurrence Limit
\$1,000,000 Personal & Advertising Limit

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

Worker's Compensation:

Coverage A: As required by Hawaii Laws

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

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

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

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

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

9. **Condition of Premises/Assumption of Risk.** KHLF hereby agrees and acknowledges that HCDA has not made any representation or warranty, implied or otherwise, with respect to the condition of the Premises, including any dangerous or defective conditions existing in or on the Premises, whether or not such conditions are known to HCDA or reasonably discoverable by KHLF. KHLF agrees that HCDA shall not be held responsible for any injury or damage to KHLF or Permitted Persons due to the presence of hazardous materials on or in the Premises. KHLF further agrees that all property, approved improvements, and equipment of KHLF kept or stored on the Premises during the term of this ROE shall be so kept or stored at the sole risk of KHLF. This provision shall survive the automatic expiration date or earlier termination of the ROE.

10. **Compliance with Laws and Regulations.** KHLF shall, at all times during the term of this ROE, observe and comply with all applicable laws, rules and regulations, whether County, State or Federal, including but not limited to, the laws applicable to the use of the Premises and the securing of any and all necessary governmental and other approvals and permits for its use of the Premises, including, but not limited to, compliance with Hawaii Revised Statutes (HRS) Chapter 6E and HRS Chapter 269E.

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

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

12. **Prohibited Use.** Any use of the Premises not authorized in Paragraph 4 above shall constitute a material breach of this ROE and upon such breach, the HCDA may terminate this ROE forthwith without notice and pursue any other remedies to which the HCDA is entitled to by law or under this ROE, provided that the HCDA shall first give KHLF notice of the breach and afford KHLF forty-eight (48) hours to cure such breach.

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

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

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

16. **Additional Terms and Conditions.**

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

**HAWAII COMMUNITY
DEVELOPMENT AUTHORITY**

By: Aedward Los Banos
Aedward Los Banos
Executive Director

**KALAELOA HERITAGE AND
LEGACY FOUNDATION**

By: _____
Name
Title

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General

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

**HAWAII COMMUNITY
DEVELOPMENT AUTHORITY**

By: _____
Aedward Los Banos
Executive Director

**KALAELOA HERITAGE AND
LEGACY FOUNDATION**

By: Valerie M. Kane
Name
Title *Secretary*

APPROVED AS TO FORM:

Deputy Attorney General

Exhibit A



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.

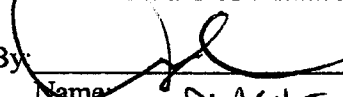
4. Except as amended and/or modified by this First Amendment, all other terms and provisions of the ROE shall remain in full force and effect, unaltered and unchanged by this First Amendment. Whether or not specifically amended by this First Amendment, all of the terms and provisions of the ROE are hereby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

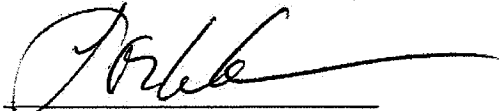
**HAWAII COMMUNITY
DEVELOPMENT AUTHORITY**

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.

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


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: 
Name: Garrett Kamemoto
Title: Interim Executive Director

**KALAELOA HERITAGE AND
LEGACY FOUNDATION**

By: 
Dwight Victor
President

APPROVED AS TO FORM:


Deputy Attorney General

Exhibit "5"

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.

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]

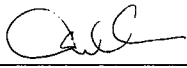
IN WITNESS WHEREOF, the Parties have caused this Fourth Amendment to be executed as of the day and year first above written.

**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