



STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

OFFICE OF FACILITIES AND OPERATIONS

January 30, 2020

Stan S. Fujimoto  
Project Manager  
Hawaii Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813

Re: Revocable Right of Entry, Kahului Civic Center Mixed-Use Project,  
TMK: (2) 3-7-004:003

Dear Mr. Fujimoto,

Enclosed for your files, please find a fully executed revocable right of entry for the Kahului Civic Center Mixed-Use Project, TMK: (2) 3-7-004:003.

Should you have any questions, please contact Roy Ikeda, Planner of the Facilities Development Branch, at 784-5094 or via email at Roy.Ikeda@k12.hi.us.

Sincerely,

A handwritten signature in cursive script that reads "Duane Kashiwai".

Duane Y. Kashiwai  
for Public Works Administrator  
Facilities Development Branch

DYK:ri  
Attachments

c: Facilities Development Branch

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HAWAII HOUSING FINANCE  
DEVELOPMENT CORP  
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## STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM  
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION  
677 QUEEN STREET, SUITE 300  
Honolulu, Hawaii 96813  
FAX: (808) 587-0600

IN REPLY REFER TO:

### REVOCABLE RIGHT OF ENTRY

PROJECT: Kahului Civic Center Mixed-Use Project  
LOCATION: 153 West Kaahumanu Avenue  
Kahului, Maui, Hawaii  
TMK (2) 3-7-004: 003

A right-of-entry (the "Right of Entry") dated JAN 15 2020 ("Right of Entry Date"), is granted by the **HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION** ("**HHFDC**"), a public body and a body corporate and politic of the State of Hawaii, whose business and mailing address is 677 Queen Street, Suite 300, Honolulu, HI 96813, to the **STATE OF HAWAII, DEPARTMENT OF EDUCATION**, whose address is P.O. Box 2360, Honolulu, Hawaii 96804, its employees, officers, agents, representatives, invitees, and its contractors, including their consultants, subcontractors and suppliers (hereinafter collectively "Permittee") onto and over the property of approximately 5.572 acres, and existing improvements thereon, including buildings, structures, facilities or other improvements, at 153 West Kaahumanu Avenue, Kahului, Maui, Hawaii, Tax Map Key (2) 3-7-004: 003, as shown on the map marked Exhibit A, which is attached and incorporated by reference (the "Property"), for the following purposes—

Educational purposes consisting of adult education and lawnmower operations.

The duration of this Right of Entry shall be from the later to occur of the following:

- (i) The date of the Governor's Executive Order for the Property to HHFDC ("Governor's Executive Order");
- (ii) Consent by the Board of Land and Natural Resources ("BLNR") to this Right of Entry ("BLNR Consent"); or
- (iii) The Right of Entry Date,

until **December 31, 2021, month-to-month thereafter**, unless extended at the sole discretion of HHFDC, subject to the following conditions:

1. This Right of Entry shall be subject to the Governor's Executive Order and the BLNR Consent. If there are any inconsistencies between this Right of Entry and the Governor's Executive Order and the BLNR Consent, the more restrictive requirement shall govern.
2. Permittee shall accept the Property in "AS IS" condition.
3. Permittee shall assume all responsibility for its actions or omissions in connection with this Right of Entry.
4. At all times during the term of this Right of Entry, Permittee shall keep the Property in a safe, clean, sanitary and orderly condition, and shall not make, permit, or suffer any waste, strip, spoil, nuisance, or unlawful, improper or offensive use of the Property. Permittee acknowledges the Phase I Environmental Site Assessment ("ESA") of the Property done by Enpro Environmental ("Enpro") dated May 8, 2019, and that HHFDC has approved its sub-consultant, Enpro, to do Phase II ESA sampling of the existing buildings for asbestos, lead paint and toxicity characteristic leaching procedure. HHFDC shall provide copies of the sampling reports to Permittee upon completion of the reports.
5. Permittee shall be responsible for clearing and removing all materials and debris generated during and resulting from Permittee's activity within the Property.
6. Permittee shall ensure that any materials stored in and upon the Property shall not contain any hazardous or toxic material or substance as such terms have been, or may be, defined by any federal, state, county or municipal laws, ordinances, rules and regulations. HHFDC acknowledges Permittee's proposed use of the Property for lawnmower operations may include storage and use of materials that may be hazardous or toxic (e.g., gas, oils, cleaners, etc.) ("Work Materials and Substances"), and authorizes such use in the ordinary course of Permittee's business, however, at the termination or earlier expiration of this Right of Entry, Permittee shall submit evidence satisfactory to HHFDC's environmental consultant or the Department of Health, at HHFDC's sole discretion, indicating that Permittee has cleared and cleaned the Property of all Work Materials and Substances from the Property. This provision shall survive the expiration or earlier termination of this Right of Entry, notwithstanding any other provision to the contrary.

7. Permittee shall observe and comply with all applicable laws, ordinances, rules and regulations of the federal, state or county governments affecting the Property.
8. Permittee's activities shall in no way be outside the scope contemplated under this Right of Entry, and upon written notification of violation by HHFDC, Permittee shall promptly remove all of Permittee's property and personnel from the Property. In such event, this Right of Entry shall be deemed automatically terminated.
9. This Right of Entry cannot be assigned, sold or transferred by Permittee.
10. This Right of Entry may be terminated in the sole discretion of the HHFDC by written notification to Permittee at any time, and upon written notification, Permittee shall ~~(R1)~~remove all of Permittee's property and personnel from the Property, within 30 days from HHFDC's written notification to Permittee.
11. This Right of Entry is non-exclusive. HHFDC may permit entry on the Property to other persons. Permittee shall work cooperatively with other persons granted use of the Property by HHFDC. Should any of the other permittees be affected detrimentally by Permittee under this Right of Entry, all costs incurred for any damages or repairs shall be borne by Permittee. HHFDC shall include reciprocating language in rights-of-entry HHFDC hereafter grants to other persons such that other parties shall not detrimentally affect Permittee's rights under this Right of Entry. Permittee acknowledges the following:
  - a. That the Department of Accounting and General Services ("DAGS") plans to undertake electrical upgrades to the existing improvements at the Property.
  - b. That the County of Maui Department of Transportation will be conducting site investigation, planning and construction of a bus hub at the corner of the Property at Vevau and School Street.
  - c. That G70 will be conducting site investigation, master planning, and entitlements of the Property for the proposed Kahului Civic Center Mixed-use Project. G70 will coordinate its activities with Permittee and upon the completion of any destructive samplings and investigations,

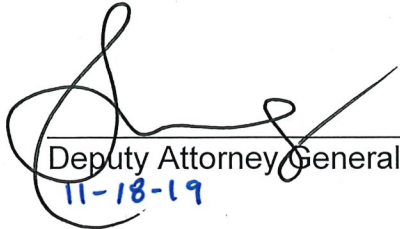
G70 will repair and restore the Property to the condition as near as practicable as the condition prior to the investigations, or better.

12. This Right of Entry may be subject to easements and conditions for entry by others. Should any of the other permittees be affected detrimentally by Permittee under this Right of Entry, all costs incurred for any damages or repairs shall be borne by Permittee. HHFDC shall include reciprocating language in rights-of-entry or easements HHFDC hereafter grants to other persons such that other parties shall not detrimentally affect Permittee's rights under this Right of Entry.
13. There shall be no construction on the Property which will alter or detrimentally affect the Property, without prior written approval by HHFDC. HHFDC acknowledges that Permittee will be conducting sewer clean-out activities for its operation at the Property.
14. Permittee shall cause its contractors, consultants, and/or persons acting for or on its behalf ("Contractors") to indemnify, defend and hold harmless HHFDC, DAGS, DLNR, and the State of Hawaii, and their officers, employees, directors, agents, representatives, officials, successors and assigns from and against any and all liability, loss, damage, cost, and expense, including attorneys' fees, and all claims, suits, and demands therefore, relating to, arising out of or resulting from: (a) the acts or omissions of the Permittee's Contractors or their employees, officers, agents, or subcontractors; (b) this Right of Entry; (c) the Property and/or use, occupation or operation of the Property; and/or (d) the enforcement of this Right of Entry (whether or not suit is brought therefore). This provision shall survive expiration or earlier termination of this Right of Entry, notwithstanding any other provision to the contrary.
15. Permittee shall cause its Contractors, at their cost and expense, to procure and maintain insurance acceptable to HHFDC throughout the term of this Right of Entry as set forth in Exhibit B, which is attached hereto and incorporated by reference.
16. Permittee shall be responsible for the repair and maintenance of the Property and improvements thereon.
17. Except as described herein, Permittee shall vacate the Property and shall promptly remove all of Permittee's property and personnel from the Property upon termination or expiration of this Right of Entry.

18. Except as described herein, upon vacating the Property, Permittee shall restore the Property to a condition as similar as reasonably possible to that which existed prior to the Permittee's entry to the Property, reasonable wear and tear excepted, or better. This provision shall survive the termination of this Right of Entry, notwithstanding any other provision to the contrary.
19. HHFDC reserves the right to impose additional terms and conditions, if it deems them necessary, provided that such additional terms and conditions do not interfere with Permittee's functions and operations under this Right of Entry unless mutually agreed upon by the parties.

*[Signature page follows]*

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy Attorney General  
11-18-19

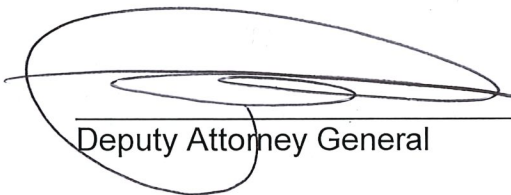
HAWAII HOUSING FINANCE AND  
DEVELOPMENT CORPORATION

By:   
\_\_\_\_\_  
Craig K. Hirai  
Its Executive Director

Dated: NOV 19 2019

“HHFDC”

APPROVED AS TO FORM:

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

ACCEPTED AND AGREED:

DEPARTMENT OF EDUCATION  
STATE OF HAWAII

By:   
\_\_\_\_\_  
Christina Kishimoto  
Its Superintendent

Dated: 01-15-2020

“Permittee”

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EXHIBIT A

Property Map

EXHIBIT B

Insurance Requirements



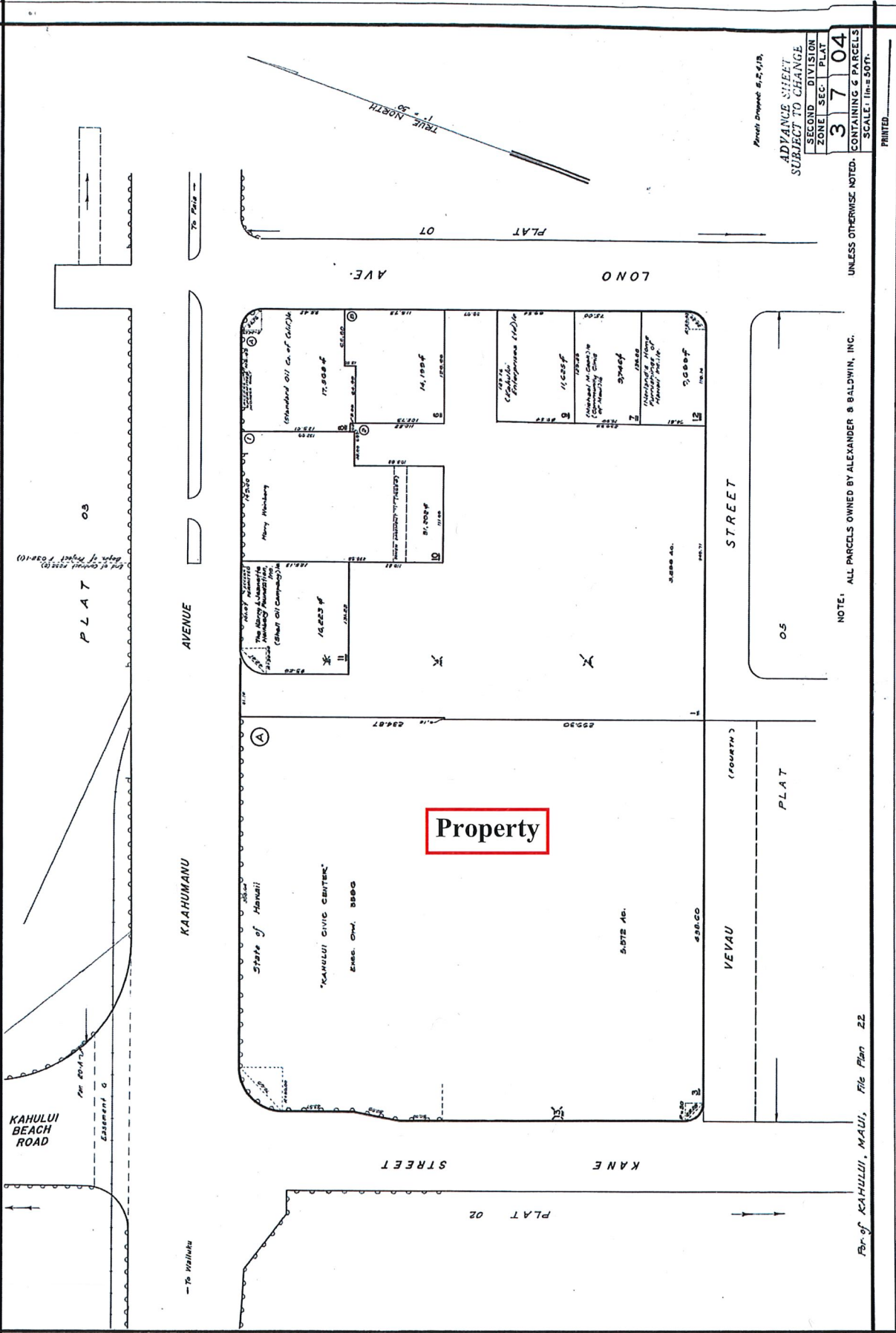


EXHIBIT A

Plat's Dropped 6, 5, 4, 13,  
 ADVANCE SHEET  
 SUBJECT TO CHANGE

SECOND DIVISION	3
ZONE	7
SEC.	04
PLAT	

UNLESS OTHERWISE NOTED,  
 CONTAINING 6 PARCELS  
 SCALE: 1 in. = 50 FT.

NOTE: ALL PARCELS OWNED BY ALEXANDER & BALDWIN, INC.

Plat of KAHULUI, MAUI, File Plan 22

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Prepared for  
 N.A.I.D.S.C.  
 Source: Tax Maps Bureau  
 1944

**INSURANCE REQUIREMENTS**  
**REVOCABLE RIGHT OF ENTRY – KAHULUI CIVIC CENTER MIXED-USE PROJECT**

The policy or policies of insurance maintained by Permittee’s contractors, consultants, and/or persons acting for or on its behalf (“Contractors”) shall provide the following minimum policy limits and coverages:

<b>Coverage</b>	<b>Minimum Policy Limits</b>
Commercial General Liability and Automobile Insurance	Permittee’s Contractor’s commercial general liability and automobile liability, including products and completed operations coverage, and automobile liability insurance shall be written on occurrence form and contain broad form property damage and bodily injury coverage of a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate arising out of or in connection with operations performed under this Right of Entry. Automobile insurance, and basic no-fault and personal injury protection as required by Hawaii laws, shall be no less than \$1,000,000 per accident. If Permittee’s Contractors do not own automobiles, they shall maintain Hired & Non-owned Automobile Liability coverage.
Workers’ Compensation	As required by Hawaii laws.
Professional Liability	Permittee’s Contractor’s Professional Liability insurance (E&O) shall cover all activities under this Right of Entry in the amounts of not less than \$1,000,000 per claim and \$2,000,000 in the annual aggregate.

The Commercial General Liability Insurance and the Automobile Insurance shall contain the following provisions:

1. It is agreed that any insurance maintained by the State of Hawaii shall apply in excess of and not contribute with insurance provided by this policy.
2. The State of Hawaii, DLNR, DAGS and HHFDC are added as additional insured parties for operations performed on the Property under this Right of Entry.
3. Insurance shall include a cross liability or severability of interest clause.
4. Permittee shall cause its Contractors to immediately provide written notice to HHFDC should any of the insurance policies evidenced on the Permittee’s Contractor’s Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

The above required insurance shall be primary and shall cover the insured for all operations to be performed under this Right of Entry and on the Property, all operations performed incidentally, directly or indirectly connected with all operations to be performed under this Right of Entry and on the Property, including operations performed outside the work area and all change order work.

Permittee shall cause its Contractors to agree to a Waiver of Subrogation for each required policy described herein. When required by the insurer, or should a policy condition not permit Permittee's Contractors to enter into a pre-loss agreement to waive subrogation without an endorsement, Permittee's Contractors shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Permittee's Contractors enter into such an agreement on a pre-loss basis.

Permittee agrees to cause its Contractors to deposit with HHFDC, on or before the Effective Date of this Right of Entry, certificates of insurance necessary to satisfy HHFDC that the insurance provisions of this Right of Entry have been complied with. Permittee further agrees to cause its Contractors to keep such insurance in effect and current certificates of insurance on deposit with HHFDC during the entire term of this Right of Entry. The certificates of insurance shall refer to this Right of Entry.

HHFDC shall retain the right at any time to review and approve coverage, form, and amount of the insurance required by this Right of Entry. If, in the reasonable opinion of HHFDC, the insurance provisions in this Right of Entry do not provide adequate protection for HHFDC, HHFDC may require Permittee to cause its Contractors to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. HHFDC's requirements shall be reasonable but shall be designed with due regard to the then prevailing prudent business practice in the State of Hawaii to assure protection from and against the kind of and the extent of risks which exist at the time a change in insurance is required.

HHFDC shall notify Permittee in writing of any changes in the insurance requirements desired by HHFDC. If Permittee's Contractors do not deposit copies of insurance policies with HHFDC incorporating such changes requested by HHFDC within sixty (60) days of receipt of such notice, this Right of Entry shall be in default without further notice to Permittee and HHFDC shall be entitled to all legal remedies, including termination of this Right of Entry, and Permittee's Contractors shall be liable for all damages, costs, and fees. If any such insurance changes shall not be available at commercially reasonable rates, Permittee shall have the right to contest HHFDC's request.

The procuring of the required policy or policies of insurance shall not be construed to limit Permittee's Contractor's liability under this Right of Entry nor to fulfill the

indemnification provisions and requirements of this Right of Entry. Notwithstanding the policy or policies of insurance, Permittee's Contractors shall be obligated for the total amount of any damage, injury, or loss incurred under or related to this Right of Entry to the extent Permittee's Contractors are liable therefor under this Right of Entry.

All rights or claims of subrogation against the State of Hawaii, DLNR, DAGS and HHFDC, their officers, employees, and agents are waived.

Permittee shall cause its Contractors to procure from each of the insurers under all policies of insurance obtained pursuant to the provisions of this Right of Entry, including but not limited to public liability and fire insurance, a waiver of all rights of subrogation which said insurer might otherwise have, as against the other party hereto, said waiver to be in writing and for the express benefit of the other.

If applicable, Permittee shall cause its Contractors, at their cost and expense, to procure and maintain at all times during the term of this Right of Entry, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the Property in the joint names of HHFDC and Permittee, with the standard mortgage clause for mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities and shall pay the premiums at the time and place required under the policy.

Subject to the prior written approval of any prior mortgagee, in the event of total or partial loss, any proceeds derived from the policy(s) shall be used by Permittee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the HHFDC.

Permittee shall cause its Contractors to furnish HHFDC on or before the date of this Right of Entry, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s).