

RIGHT-OF-ENTRY AND RENTAL AGREEMENT

THIS RIGHT-OF-ENTRY AND RENTAL AGREEMENT ("Agreement"), made and entered into by and between the STATE OF HAWAII, by its Director of Transportation, hereafter called the "STATE", whose address is 869 Punchbowl Street, Honolulu, Hawaii, 96813, and **PHILIP J. LEAS and SHARON E. WHITE, as Trustees of the William F. Mowry Family Trust dated November 16, 2000 and the Martha J. Mowry Family Trust dated November 16, 2000**, whose mailing address is c/o Mr. Philip J. Leas, 1000 Bishop Street, 12th Floor, Honolulu, Hawaii 96813, having all powers under said Trusts, including, but not limited to, full power to buy and/or sell, invest, reinvest, lease, make repairs, alterations and improvements on any real property, subdivide, grant easements, and borrow money, hereafter collectively called the "GRANTOR",

WITNESSETH THAT:

WHEREAS, the STATE requires certain property designated as **Construction Parcel C-2** identified as being portion of Tax Map Key No. (4) 5-4-004:010 (Portion) containing an area of approximately 169,885 square feet; which is situated at Hanalei, Island of Kauai, Hawaii, as delineated on Exhibit A, which is attached hereto and incorporated herein by reference (hereafter referred to as the "Property"), for a public purpose, to wit: the construction, preservation and protection of the

highway project known as Kauai Emergency Flood Repairs and Cleanup at Various Locations, March 2021, Project No. ER-24(003), (hereafter referred to as the "Project"),

WHEREAS, the STATE desires to obtain immediate entry to and possession of the Property to commence construction of the Project without delay, it being contemplated that a construction contract will be awarded in the near future; and

WHEREAS, the STATE will be using the Property for Project work; and

WHEREAS, GRANTOR is the fee owner of the Property (based on available public records) which will be affected by the Project; and

WHEREAS, the GRANTOR desires to cooperate with the STATE to allow the construction of the Project to proceed without delay,

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the parties hereto mutually agree as follows:

1. Right of Entry and Possession. The GRANTOR, who admits it is the fee owner of the Property with all powers under said Trusts to enter into this Agreement, hereby grants to the STATE, its officers, employees, contractors, and permitted assigns, permission to enter upon and take temporary, nonexclusive possession of the Property as shown on

Exhibit A, at the **Notice to Proceed date** for the purposes of the Project, which is admitted to be for public use. The STATE will take reasonable steps to ensure that the contractor(s) the STATE selects to construct the Project (hereafter collectively and individually called the "CONTRACTOR") will permit the GRANTOR and utility companies to exercise any existing rights each may have relating to the Property, including, but not limited to, access over and through the Property, as long as said exercise of rights, including any exercise of said access rights, does not unreasonably delay or interfere with the Project work.

2. STATE's responsibility. The STATE shall be responsible, to the extent permitted by law, for damage or injury caused by the STATE's officers and employees in the scope of their employment provided that the STATE's liability for such damage or injury has been determined by a court or agreed to by the STATE. The STATE shall pay for such damage and injury, provided that funds are appropriated and allotted for that purpose.

3. Insurance by CONTRACTOR. The STATE shall require the CONTRACTOR to include GRANTOR and the STATE as additional insureds on the insurance policies (Comprehensive Personal Injury and Property Damage Liability; Automobile Bodily Injury and Property Damage; and Worker's Compensation) that will be prescribed by the proposed Project construction contract. Said

insurance policies shall also provide a waiver of subrogation in GRANTOR's favor. The STATE shall require the CONTRACTOR to provide written verification of compliance in the form of an insurance certificate to the GRANTOR prior to the start of Project construction.

4. Indemnification by CONTRACTOR. The STATE shall ensure that the CONTRACTOR shall execute an agreement whereby the CONTRACTOR would indemnify the GRANTOR against any liability, including all loss, damages, costs, expenses and attorney's fees, for any damage to real or personal property, and including environmental damage, if any, or injury to or death of persons when such damage, injury or death is caused by any action or neglect of the CONTRACTOR in the exercise of the rights granted under this Agreement; provided that the CONTRACTOR shall not be obligated to indemnify the GRANTOR if and to the extent that such damage, injury or death is caused by the gross negligence of the GRANTOR or any of the GRANTOR's officers, employees, agents, licensees, invitees, contractors, representatives, or guests.

5. Rental. The STATE agrees to pay to GRANTOR the amount of **SEVEN THOUSAND FOUR HUNDRED NINETY FIVE DOLLARS (\$7,495.00)** as the rent for the use of the construction parcel. The payment will be made at or before the earlier to occur of the **Notice to Proceed date** or the first entry on the Property

incident to or in anticipation of the Project. If GRANTOR does not receive any payment when due, interest will accrue on the overdue unpaid balance at the rate of one percent (1%) simple interest per month and will stop accruing when the STATE issues the payment.

6. Restoration. Upon the full or partial termination of this Agreement, the STATE and/or its CONTRACTOR shall remove all equipment or tangible personal property from the Property, shall restore the ground condition of the Property to the condition at the time of the execution of this Agreement, and shall otherwise repair all damage to the Property caused by CONTRACTOR, including GRANTOR's entry area, gate, road and utility lines. The STATE shall furnish all permits required for CONTRACTOR's work in the Conservation District on the Property and shall be responsible for all impacts to wetlands as a consequence of the Project.

7. Term. The term of this Agreement shall commence upon the date, as agreed upon by the GRANTOR, the STATE and/or its CONTRACTOR enters onto the Property, and shall end, including the restoration required in paragraph 6 above, not more than one year from the agreed upon date.

8. Extension. This Agreement may be extended upon mutual written agreement of the parties hereto, and the monthly rental payable from the STATE to the GRANTOR for the Property

during such extended term will be a prorated annual amount of the rental amount stated above payable in advance of the extended term, and shall be proportionately adjusted if any portion of the Property has been returned to the GRANTOR.

9. Termination. This Agreement may be terminated upon thirty (30) days written notice by the STATE, whereupon the STATE shall be required to complete the restoration required in paragraph 6 above within that time and GRANTOR shall retain all compensation.

10. No Unreasonable Interference. The GRANTOR agrees not to unreasonably interfere with the STATE's facilities, operations and activities in, on or connected with the Property.

11. Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same document binding all of the parties hereto notwithstanding all of the parties are not signatory to the original or the same counterpart. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

12. Headings, Captions. The headings and captions used herein are for convenience of reference only and are not to

be used to construe, interpret, define or limit the paragraphs to which they may pertain.

13. Singular, Plural. In this Agreement, the singular shall include the plural, and the plural shall include the singular, as the case may be.

14. Binding Effect. The term "GRANTOR" wherever used herein shall include the GRANTOR, and the representatives, successors, successor-in-trust and assigns of the GRANTOR. The term "STATE" wherever used herein shall include the State of Hawaii, its representatives, successors and permitted assigns, and this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their representatives, successors, successors-in-trust and assigns. Under no circumstances shall the trustees for GRANTOR have any personal liability under or related to this Agreement, and only the trust estates shall be bound.

15. Assignment. The GRANTOR and the STATE may not assign or otherwise transfer any interest in this Agreement without the written consent of all parties to this Agreement.

16. Amendment. This Agreement shall not be amended except in writing signed by the GRANTOR and the STATE.

17. GRANTOR's Responsibility. In no event will the GRANTOR have any liability to the STATE under this Agreement,

A handwritten signature in black ink, appearing to be initials or a stylized name, located in the bottom right corner of the page.

except to allow entry on the Property and as provided in paragraph 10 above.

18. Governing Law. This Agreement shall be governed by the laws of the State of Hawaii.

19. Entire Agreement. This Agreement and the exhibit hereto constitute the entire agreement between the parties hereto pertaining to the subject matter hereto and all prior and contemporaneous agreements, representations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. The exhibit hereto and each and every provision thereof are incorporated by this reference.

20. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be deemed a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

21. STATE is self-insured. The STATE, as a sovereignty is self-insured and therefore insurance, including but not limited to, public liability and property damage, is not required. The STATE assumes all risks arising from the condition of the Property or associated with the Property and acknowledges that GRANTOR makes no representations except as stated in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this
Right-of-Entry and Rental Agreement this _____ day of
_____, 20_____.

GRANTOR:

8/9/22

Date

By *Philip J. Leas*
PHILIP J. LEAS, Trustee of
William F. Mowry Family Trust
dated November 16, 2000, and
Martha J. Mowry Family Trust dated
November 16, 2000

Date

By _____
SHARON E. WHITE, Trustee of
William F. Mowry Family Trust
dated November 16, 2000, and
Martha J. Mowry Family Trust dated
November 16, 2000

APPROVED AS TO LEGALITY,
FORM, EXCEPTIONS, AND
RESERVATIONS:

STATE:

STATE OF HAWAII

Deputy Attorney General
Name: _____
Dated: _____

By _____
JADE T. BUTAY
Director of Transportation

0 100 200 Feet

N

Hanalei Plantation Road

Kuhio Highway

Construction Parcel C-2
Owner: Hanalei Garden Farms Condominium
3.9 acres / 169,885 square feet

Kuhio Highway

Hanalei Bridge

Kuhio Highway

TMK (4)5-4-004:010
Owner: Hanalei Garden Farms Condominium
153.4 acres / 6,681,800 square feet

Exhibit A
Kuhio Highway: Route 56, Milepost 27.3 to Milepost 28.11 and
Kuhio Highway: Route 560, Milepost 0.0 to Milepost 1.5
Kauai Emergency Flood Repairs and Cleanup at Various Locations, March 2021
Hanalei, Kauai, Hawaii
Project No. ER-24(003)

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community