

**REVOCABLE RIGHT OF ENTRY AGREEMENT**

This REVOCABLE RIGHT OF ENTRY AGREEMENT (the "**Agreement**"), dated August 28, 2019, is by and between the LEILANI ESTATES COMMUNITY ASSOCIATION, whose address is 13-3441 Moku Street, Pahoia, Hawaii 96778 ("**Owner**"), and State of Hawaii, Department of Health, Clean Air Branch, P.O. Box 3378, Honolulu, Hawaii, 96801-3378. Contact Keith E. Kawaoka, D.Env, Deputy Director for Environmental Health, (808) 586-4200. ("**Permittee**").

Owner hereby grants to Permittee permission to enter, and Permittee hereby accepts such permission to enter, the Property defined in this Agreement, subject to the terms and conditions of this Agreement.

**AGREEMENT**

**A. Specific Provisions.** The following constitute the "**Specific Provisions**" of this Agreement and are referred to elsewhere in this Agreement.

1. **Property:**  
(Section 1) The Property described in Exhibit A, constituting approximately 850 square feet, situated in Puna, Hawaii.  
Tax Map Key No.: (130360410000)
2. **Term:**  
(Section 2) Commencing on August 28, 2019 and ending on August 27, 2024, unless sooner terminated as provided in this Agreement.  
*Extensions will be considered every five years through mutual agreement.*
3. **Purpose(s) for Entry:**  
(Section 3) Entry shall be solely for the following purpose(s):
  - (1) Installation of a Air Monitoring Station
  - (2) Periodic inspection, upkeep and monitoring of installed equipment
  - (3) Data gathering for input and upload to DOH web site providing key air quality data community wide
4. **Insurance:**  
(Section 7) The State Department of Health will provide upon request to the Board of Directors of the Leilani Estates Community Association, a Statement of Self Insurance from the State of Hawaii, Department of Accounting and General Services, certifying that as an agency of the State of Hawaii, the DOH is self-insured against losses including general liability and property damage which may involve claims and demands for loss, damage or destruction of property and personal injury or death.
5. **Special Terms:** The following items (if any) are "**Special Terms**" to this Agreement.
  - (1) Permittee shall conduct only those activities listed in section 3 above and no other activities.

(2) Permittee shall not interfere with or disrupt any of Owner's or Owner's lessees or tenants' on the Property.

(3) Permittee shall exercise due care of public and private safety on the Property and shall comply with all laws, ordinances, and rules and regulations of governmental agencies.

(4) Permittee shall be responsible for any costs related to improvements, general maintenance and cleaning of the Property as well as utilities. Other estimated costs would be based on a labor rate of \$50 and invoiced materials costs and only be imposed if damage to LEILANI ESTATES COMMUNITY ASSOCIATION property resulted from the permittees equipment or access to LEILANI ESTATES COMMUNITY ASSOCIATION property.

(5) The Department of Health (DOH) as an organization of the State of Hawaii, shall be liable, subject to the applicable provisions of Chapter 661, Hawaii Revised Statutes (Actions By and Against the State) and Chapter 662, Hawaii Revised Statutes (State Tort Liability Act) for all claims and demands for property damage, loss, personal injury or death caused by the negligent or wrongful act or omission of any officer or employee of the DOH while acting within the scope of the office of employment, or persons acting for the DOH in an official capacity, temporarily, whether with or without compensation.

(6) Permittee shall inform Owner of any identified hazard, potential hazard and unlawful activities including trespassers on Property.

(7) Permittee understands that Permittee shall not have the exclusive right to use the roadways. Permittee further understands that Owner may, from time to time, permit others to use the roadways.

(8) DOH is not authorized to indemnify. The Board of Directors of the Leilani Estates Association and DOH acknowledge and agree that DOH, as an agency of the State of Hawaii, is not authorized to indemnify the Board of Directors of the Leilani Estates Community Association in any way, including, without limitation, against any claims for bodily injury, wrongful death, and/or property damages by any persons. Notwithstanding anything to the contrary contained in this Revocable Right of Entry Agreement, DOH shall have no contractual duty to indemnify, defend, or hold harmless the Board of Directors of the Leilani Estates Community Association or any other persons under any circumstances arising out of or related to this Revocable Right of Entry Agreement. In each instance in this Revocable Right of Entry Agreement where DOH is obligated to indemnify, defend, or hold harmless the Board of Directors of the Leilani Estates

Community Association or any other persons, such obligations shall be deemed to be null and void and of no effect, and such contrary indemnity, defense, and/or hold harmless obligations and provisions shall be deemed to be superseded by this provision, and of no force or effect.

The Department of Health (DOH), as an organization of the State of Hawaii, shall be liable, subject to the applicable provisions of Chapter 661, Hawaii Revised Statutes (Actions By and Against the State) and Chapter 662, Hawaii Revised Statutes (State Tort Liability Act) for all claims and demands for property damage, loss, personal injury or death caused by the negligent or wrongful act or omission of any officer or employee of the DOH while acting within the scope of the office of employment, or persons acting for the DOH in an official capacity, temporarily, whether with or without compensation.

(9) Entry by the Permittee shall be on standard work days M-F between 7:45AM and 4:30PM unless exceptions are approved by the LEILANI ESTATES COMMUNITY ASSOCIATION.

(10) Revocation and Termination – LEILANI ESTATES COMMUNITY ASSOCIATION, at its sole discretion, may request DOH to relocate their equipment, at their cost, with 365 days notice in the event the site selected is needed for LEILANI ESTATES COMMUNITY ASSOCIATION business purposes.

(11) DOH will obtain any necessary permits or waivers through the County building office as required to legally operate the air monitoring station.

(12) LEILANI ESTATES COMMUNITY ASSOCIATION accepts no liability for any damage to DOH property used in this partnership.

**B. Exhibits.** The following are attached as Exhibits and by this reference made a part of this Agreement:

Exhibit A	Description of the Property – see attached map with locator.
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**C. Board of Directors Not Personally Liable.** This instrument has been executed by or on behalf of the Board of Directors of the Leilani Estates Community Association in their fiduciary capacities as said Board Members, and not in their individual capacities. No personal liability or obligation under this instrument shall be imposed or assessed against said Board Members in their individual capacities.

**D. Entire Agreement; Counterparts.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof. This Agreement may be

executed in multiple counterparts, each of which shall be deemed a duplicate original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written.

By: \_\_\_\_\_  
ANDY ANDREWS  
PRESIDENT, BOARD OF DIRECTORS,  
LELANI ESTATES COMMUNITY  
ASSOCIATION  
"OWNER"

By: \_\_\_\_\_  
KEITH E. KAWAOKA, D.Env.  
DEPUTY DIRECTOR FOR  
ENVIRONMENTAL HEALTH  
DEPARTMENT OF HEALTH  
STATE OF HAWAII

By: \_\_\_\_\_  
MARIANNE ROSSIO, PE  
MANAGER, CLEAN AIR BRANCH  
DEPARTMENT OF HEALTH  
STATE OF HAWAII  
"PERMITTEE"

# Exhibit A

