

RIGHT-OF-ENTRY AND RENTAL AGREEMENT

THIS AGREEMENT, made and entered into by and between the STATE OF HAWAII, by its Director of Transportation, hereinafter called the "STATE", and WORLD BOTANICAL GARDENS INCORPORATED, a Nevada corporation whose post office address is P.O. Box 324, Honomu, Hawaii 96728 hereafter called the "GRANTOR",

WITNESSETH THAT:

WHEREAS, the STATE requires certain property designated as Construction Parcel C-1, containing an area of approximately 22,132 square feet or 0.508 acres, identified by Tax Map Key No. (3) 3-1-001:015 (portion), situated at Kamakee, North Hilo, State of Hawaii, all of which are more particularly shown on Exhibit A attached hereto and incorporated herein by reference (hereafter collectively called the "Property"), for a public purpose, to wit: the construction, preservation and protection of the highway project known as the Rehabilitation of Umauma Bridge, Project No. BR-019-2(61) (hereafter the "Project"); and

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, GRANTOR is the fee owner of the Property 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 hereby grants to the STATE, its officers, employees and contractors, permission to enter upon and take possession of the Property as shown on the Right-of-Way Map for the Project filed in the Highways Division, Department of Transportation, State of Hawaii, for the purposes of the Project. The Property will be used to access the Project and stage equipment. The STATE will take reasonable steps to ensure that the STATE's contractor(s) the STATE selects to construct the Project (hereafter 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 exercise of said rights, including exercise of said access rights, does not unreasonably delay or interfere with the Project work.

2. Rental. The STATE agrees to pay to GRANTOR the amount of \$305.00 as the annual rent for the use of the Property.

The STATE shall give the GRANTOR thirty (30) days written notice prior to the start of construction. The first annual payment will be made within sixty (60) days from the start of construction and each subsequent annual payment, if any, will be made on the anniversary date of the construction start date, with the final payment being pro-rated accordingly based on the actual term of use of the Property by the STATE. 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.

3. 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.

4. Insurance by Contractor. The STATE shall require any CONTRACTOR the STATE selects to construct the Project to provide, commercial general liability and automobile liability insurance covering all activities conducted on the Property. The limits of liability for the commercial general liability insurance coverage shall not be less than TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) for each of the following coverages:

(a) bodily injury and property damage (per occurrence), (b) personal and advertising injury and (c) products - completed /operations aggregate. The limit of liability for the automobile liability insurance coverage shall not be less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) for each of the following liability coverages: (i) bodily injury (per accident) and (ii) property damage. The GRANTOR and the STATE shall be named as additional insureds under said insurance policies.

5. Indemnification by Contractor. The STATE shall ensure that the CONTRACTOR shall execute an agreement whereby the CONTRACTOR shall 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, or injury to or death of persons when such damage, injury or death is caused by the negligence 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 negligence of the GRANTOR or any of the GRANTOR's officers, employees, agents, representatives, or guests.

6. No limit on eminent domain power. Nothing herein contained shall be deemed to preclude, limit, restrict, waive or affect in any way the STATE's right as sovereign to acquire, by

its power of eminent domain, the Property or any portion thereof or any interest therein.

7. 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.

8. Extension. The term of this Agreement may be extended upon mutual written agreement of the parties hereto. Rent payable from the STATE to GRANTOR for the use of the Property during such extended term will be TWENTY SIX AND NO/100 DOLLARS (\$26.00) per month or such pro rata portion thereof if part of the Property has been returned to the GRANTOR, or if the use of the Property is for less than one month.

9. Termination. This Agreement may be terminated upon thirty (30) days written notice by the STATE.

10. Excess annual rent. If portions of the Property are no longer required by the STATE, or if the Property is used for less than one year, GRANTOR agrees to reimburse and pay in full to the STATE the appropriate and proper prorated amount of the excess annual rent paid by the STATE for the use of the Property. GRANTOR shall fully reimburse and pay such excess rental to the STATE within sixty (60) days of the effective termination date.

11. Restoration. Upon the full or partial termination of this Agreement, the STATE and/or its contractors shall remove all equipment or tangible personal property from the Property or

such portion of the Property no longer required by the STATE, and shall restore the ground surface of the Property or that portion of the Property no longer required by the STATE to a condition as similar as reasonably possible to that which existed prior to the STATE's possession of the Property, excepting reasonable wear and tear and any improvements within the Property purchased by the STATE.

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

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

15. Counterparts. 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 remaining pages assembled as one document.

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


17. Binding effect. The term "GRANTOR" wherever used herein shall include the GRANTOR, and the heirs, representatives, successors and assigns of the GRANTOR. The term "STATE" wherever used herein shall include the State of Hawaii, its contractor(s), 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 and assigns.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

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


GRANTOR:

WORLD BOTANICAL GARDENS INCORPORATED
a Nevada Corporation

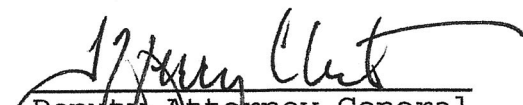
By: 
Print Name: Phyllis Soyama
Its: Operations Manager

STATE:

STATE OF HAWAII

By: 
Print Name: GLENN M. OKIMOTO
Its Director of Transportation

APPROVED AS TO FORM:


Deputy Attorney General
State of Hawaii
Print Name: Jeffery Kato

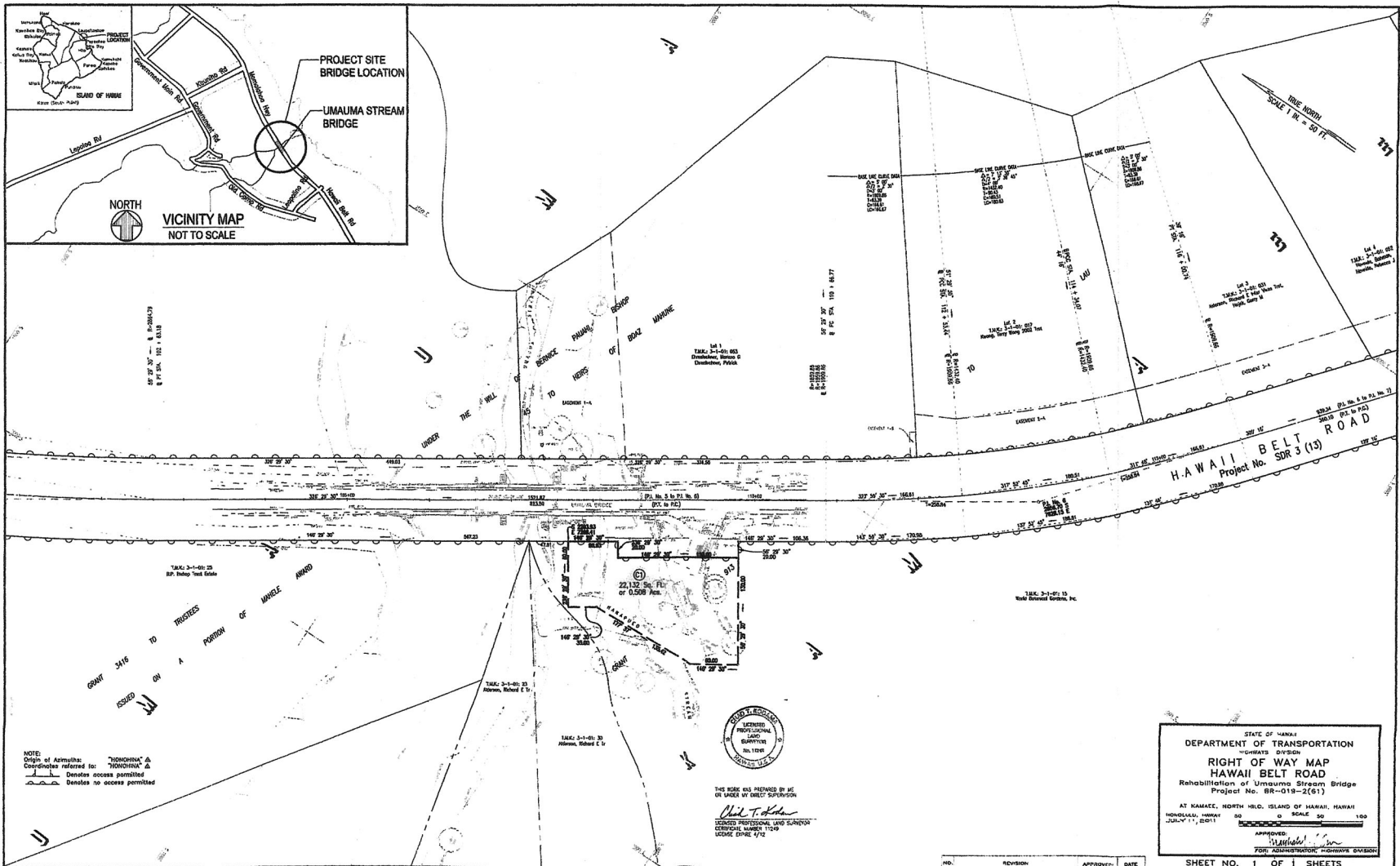


EXHIBIT A