



**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:  
HWY-RM 3.95479

September 9, 2019

Ms. Suzanne Case  
Board of Land and Natural Resources  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

HAWAII

Authorizing the Department of Transportation (DOT) to acquire Parcels 102 and 103 and to consolidate into Kuhio Highway, Tax Map Key (TMK): (4) 3-7-003:033.

REQUEST:

Authorization is needed to acquire subject parcels, designated as TMK: (4) 3-7-003:033, on the enclosed Warranty Deed. This request is being made at the behest of DR Horton and is needed to convey this portion of land to DOT. Once completed, DOT will process the access request and request a Use and Occupancy Agreement (UOA) for a water line that will furnish their subdivision.

LEGAL REFERENCE:

Section 171-52 and other applicable sections of Chapter 171, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

The parcel is located on the Island of Kauai.

AREA:

Kuhio Highway: Parcel 102: 696 square feet and Parcel 103: 16,470 square feet.

ZONING:

Not applicable.

LAND TITLE STATUS:

Not applicable.

CURRENT USE STATUS:

TMK: (4) 3-7-003:033 is currently not in use. The parcels make up a small strip of land that connects to Kuhio Highway. The parcels do not contain any structures or landscaping.

COMMENCEMENT DATE:

Upon transfer of title to the DOT.

COMPENSATION:

Acquiring Parcels 102 and 103 are required to process an Access and UOA request by DR Horton; therefore, there is no payment needed from DOT for the parcels.

LIENS AND/OR ENCUMBRANCES:

Vehicle access restriction on to Kuhio Highway except where designated by DOT.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

Yes, assessed and in compliance.

REMARKS:

Parcels 102 and 103 were not acquired by DR Horton when purchasing the land from Grove Farm. Therefore, DR Horton's access to the highway remains blocked.

Ms. Suzanne D. Case, Chairperson  
September 3, 2019  
Page 3

HWY-RM 3.95479

RECOMMENDATION:

Authorize DOT to acquire Parcels 102 and 103 for Kuhio Highway, in compliance with Section 171-52 and in accordance with HRS, subject to the following:

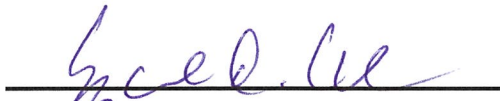
1. The property will be conveyed to DOT through Warranty Deed;
2. Review and approval by the Department of the Attorney General;
3. Such other terms and conditions as may be prescribed by the Director of Transportation to best serve the interests of the State.

Sincerely,



JADE T. BUTAY  
Director of Transportation

APPROVED FOR SUBMITTAL:



SUZANNE CASE, Chairperson

Enclosure

[illegible]

## REGULAR SYSTEM

made parts hereof (hereafter, the "Property").

AND the reversions, remainders, rents, income and profits thereof, and all of the estate, right, title, and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in any ways appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever, free and clear of all liens and encumbrances except as noted herein.

The Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that the Grantor is lawfully seised in fee simple and possessed of the above-described Property that it has a good and lawful right and title to sell and convey the same as aforesaid, that the same is free and clear of all liens and encumbrances, except as noted herein, and that it will and its successors and assigns, shall WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the claims and demands of all persons whomsoever.

AND, the Grantor warrants that if any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Grantor on or adjacent to the Property, as determined by Grantee in its sole discretion, then the Grantor shall be responsible for the reasonable costs thereof. In addition, Grantor shall execute affidavits, representations and the like from time to time at Grantee's request concerning Grantor's best knowledge and belief regarding the presence of hazardous materials on the Property placed or released by Grantor.

The Grantor agrees to release, indemnify, defend, and hold Grantee harmless, from any damages and claims resulting from the release of hazardous materials on or about the Property occurring while Grantor was in possession of the Property, or elsewhere if caused by Grantor or persons acting through or under Grantor.

For the purpose of this warranty deed "hazardous material" shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, as all of the above are 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, as amended, Chapter 128D, Hawaii Revised Statutes, as amended, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

The Grantor shall be responsible for payment of all property taxes up to the date of execution of this Warranty Deed.

IT IS MUTUALLY AGREED that the terms "Grantor" and "Grantee," as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, corporations, partnerships, or other entities and their and each of their respective successors in interest, heirs, executors, personal representatives, administrators and permitted assigns, according to the context thereof, and



that if these presents shall be signed by two or more grantors, or by two or more grantees, all covenants of such parties shall be and for all purposes deemed to be their joint and several covenants.

The parties agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, D.R HORTON - SCHULER HOMES, LLC, the Grantor herein, has caused these presents to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and the STATE OF HAWAII, by the Department of Transportation, the Grantee herein, has caused the seal of the Department of Transportation to be hereunto affixed and these presents to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, both effective as of the day, month, and year first above written.

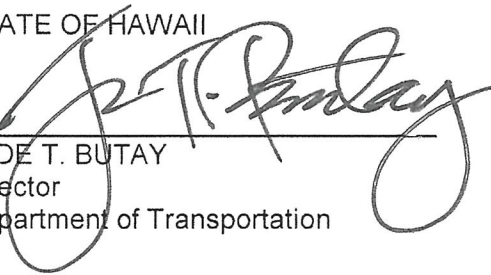
D.R. HORTON-SCHULER HOMES, LLC,  
a Delaware limited liability company,  
dba D.R. Horton-Schuler Division

By VERTICAL CONSTRUCTION CORPORATION,  
a Delaware corporation  
Its Manager

By   
Name: Robert Q. Bruhl  
Title: Division President, Hawaii Division

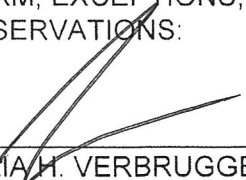
GRANTOR

STATE OF HAWAII

By   
JADE T. BUTAY  
Director  
Department of Transportation

GRANTEE

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

  
JULIA H. VERBRUGGE  
Deputy Attorney General

Date: JUL 31 2019

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this 15th day of July, 2019, before me personally appeared **ROBERT Q. BRUHL**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

*Colleen Mae Okashige*

Print or type name: Colleen Mae Okashige  
Notary Public, State of Hawaii  
My commission expires: 11/14/2019

L.S.

Date of Doc:	Undated at time of notarization	# Pages:	5 (not including exhibit(s))
Name of Notary:	Colleen Mae Okashige	Notes:	Executed in Counterparts
Doc. Description:	Warranty Deed (Kohea Loa)		
		(stamp or seal)	L.S.
<i>Colleen Mae Okashige</i>		7/15/19	
Notary Signature		Date	
First Circuit, State of Hawaii			
NOTARY CERTIFICATION			



## EXHIBIT A

PARCEL 102

KUHIO HIGHWAY  
Federal Aid Project E-12-A

PARCEL 103

Being portion a portion of Royal Patent 4481, Land Commission Award 7713, Apana 2, Part 7 to V. Kamamalu

Being also a portion of Ho'oluana At Kohea Loa, Phase I as shown on File Plan 2505 and recorded at the Bureau of Conveyance, State of Hawaii

Land Situated at Hanamā'ulu, Līhu'e, Hawai'i

Beginning at the Southwest corner of this parcel of land, and the West corner of Lot 5, Ho'oluana At Kohea Loa, Phase I as shown on File Plan 2505, the coordinate of the said point of beginning refer to Government Triangulation Station "KĀLEPA" being 934.91 South and 2575.19 East, thence running by azimuths and measured clockwise from True South:

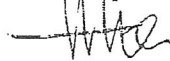
1. Along the remainder of Royal Patent 4481. Land Commission Award 7713, Apana 2, Part 7 to V. Kamamalu, on a curve to the left, with a radius of 2630.00 feet, the Chord azimuth and distance being  $218^{\circ} 19' 26''$  576.34 feet;
2.  $212^{\circ} 02'$  278.02 feet along same;
3.  $302^{\circ} 02'$  19.25 feet along the South side HANAMAULU-AHUKINI CUTOFF ROAD, F.A.P. No. DP-51-1(5);
4.  $32^{\circ} 02'$  278.02 feet along the East side of Kuhio Highway F.A.P. E-12-A, along Lot 1, Ho'oluana At Kohea Loa, Phase I as shown on File Plan 2505;
5. Thence along the East side of Kuhio Highway F.A.P. E-12-A, along Lot 1, Ho'oluana At Kohea Loa, Phase I as shown on File Plan 2505, on a curve to the right, with a radius of 2649.65 feet, the Chord azimuth and distance being  $34^{\circ} 12' 24.5''$  200.98 feet;

KUHIO HIGHWAY  
F.A.P. E-12-A  
PARCEL 103

6. Thence along the East side of Kuhio Highway F.A.P. E-12-A, across Akilolo Street, Ho'oluana At Kohea Loa, Phase I as shown on File Plan 2505, on a curve to the right, with a radius of 2649.65 feet, the Chord azimuth and distance being  $37^{\circ} 37' 14''$  114.70 feet;
7. Thence along the East side of Kuhio Highway F.A.P. E-12-A, along Lot 5, Ho'oluana At Kohea Loa, Phase I as shown on File Plan 2505, on a curve to the right, with a radius of 2649.65 feet, the Chord azimuth and distance being  $41^{\circ} 41' 24.5''$  261.58 feet;
8.  $122^{\circ} 02'$  19.76 feet along Lot 5, Ho'oluana At Kohea Loa, Phase I as shown on File Plan 2505 to the said point of beginning and containing an area of 16,470 Square Feet or 0.378 Acre.

Tax Map Key: (4) 3-7-003:033

This work was prepared by me or under my direct supervision.



5/17/2019

Thomas H. Oi  
License Professional Land Surveyor  
Certificate Number 9033-LS Exp. 4/30/20

Together with restricted abutter's rights of vehicle access into and from Hanamaulu-Ahukini Cutoff Road, Federal Aid Project No. DP-051-1(5), which rights of access were acquired by the STATE OF HAWAII, by DEED dated December 30, 1982, recorded in Liber 16794 at Page 326.

Being a portion of the premises conveyed by Limited Warranty Deed recorded September 27, 2005 as Document No. 2005-195350, as amended by Document No. A-64570580.

Grantor: VISIONARY, LLC, a Virginia limited liability company  
Grantee: D.R. Horton – Schuler Homes, LLC, a Delaware limited liability company, dba D.R. Horton-Schuler Division

SUBJECT, HOWEVER, TO THE FOLLOWING:

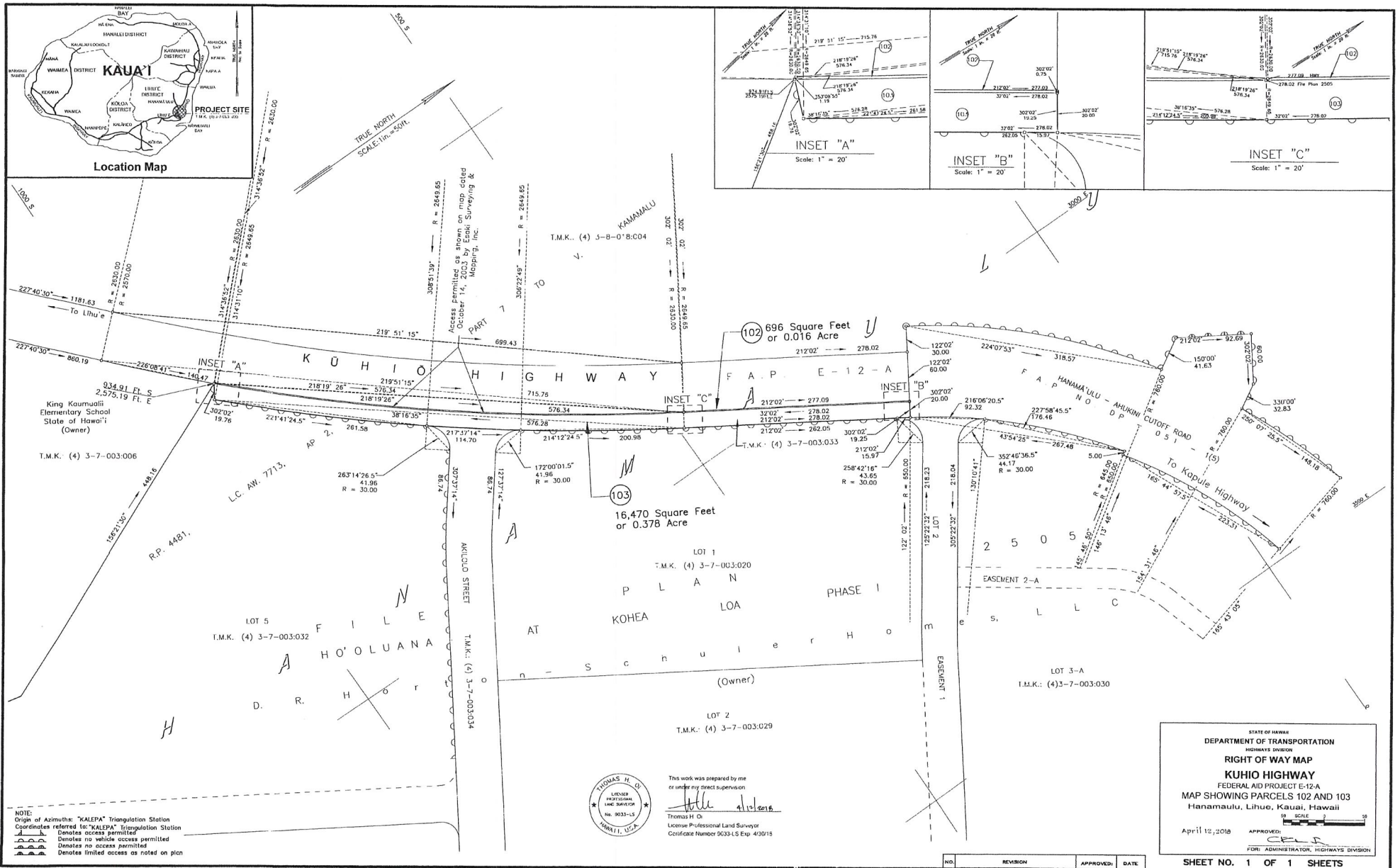
1. Title to all mineral and metallic mines reserved to the State of Hawaii.
2. Terms, provisions, reservations, covenants, conditions and restrictions, contained in the Certificate of Declaration of Conditions, recorded April 26, 1996, as Document No. 96-057945.
3. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF RESTRICTIVE COVENANTS  
(KOHEA LOA)  
DATED : --- (acknowledged May 9, 2016  
RECORDED : Document No. A-59741155

**END OF EXHIBIT A**



## EXHIBIT B



TAY MAP KEY: (4) 3-T-005