

Of Counsel:
ALSTON HUNT FLOYD & ING
Attorneys at Law
A Law Corporation

LAND USE COMMISSION
STATE OF HAWAII

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WILLIAM W.L. YUEN 1359
1001 Bishop Street, Suite 1800
Honolulu, Hawai'i 96813
Telephone: (808) 524-1800
Facsimile: (808) 524-4591
Email: WYuen@ahfi.com

Attorneys for Petitioner

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

Y-O LIMITED PARTNERSHIP

To Amend the Agricultural Land Use District
Boundary to the Urban Land Use District for
Approximately 408.719 Acres of Land at
Kaloko and Kohanaiki, North Kona, Hawaii,
Hawaii TMK Nos.: 7-3-09:19, 20, 32, and 57
to 62.

DOCKET NO. A81-525

**MOTION FOR AN ORDER REGARDING
SATISFACTION OF AFFORDABLE
HOUSING CONDITION;
MEMORANDUM IN SUPPORT OF
MOTION; EXHIBIT A; CERTIFICATE
OF SERVICE**

**MOTION FOR AN ORDER REGARDING SATISFACTION OF
AFFORDABLE HOUSING CONDITION**

COMES NOW RCFC KALOKO HEIGHTS, LLC, a Delaware limited liability company,
Successor Petitioner ("Petitioner") to Y-O Limited Partnership in the above-captioned docket, by
and through its attorneys Alston Hunt Floyd & Ing, and moves the Land Use Commission of the
State of Hawaii (the "Commission") to request an order that a donation by Petitioner of a 10.775
acre parcel of land identified as Hawaii Tax Map Key Nos. 7-3-09:32 (the "Affordable Housing
Parcel") to Hawaii Island Community Development Corporation, a Hawaii nonprofit

corporation, to build housing units to be rented or sold on a self-help or other affordable basis to Hawaii residents of low or moderate family income (the "Affordable Units") satisfies the requirements of Condition 1 of the Commission's Decision and Order dated January 20, 1983 for Phase I of the Petition Area, as amended by Order Granting Motion for Second Extension of Time to Apply for Redistricting of Phase II and Amending Conditions of the Decision and Order dated January 20, 1983, and June 13, 1990, as entered by the Commission on November 17, 1992 (the "Affordable Housing Condition") for Phase I of the Petition Area.

The Decision and Order reclassified the land comprising Phase I of the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District, and approved the reclassification of Phase II of the Petition Area on an incremental basis. To the extent the number of Affordable Units constructed on the Affordable Housing Parcel and rented or sold exceeds ten percent (10%) of the total number of lots and houses and lots sold in Phase I, the Commission's order should permit Petitioner to apply the excess number of Affordable Units to Petitioner's obligation to satisfy the Affordable Housing Condition on Phase II of the Petition Area.

This Motion is filed pursuant to §15-15-70, Hawaii Administrative Rules, and is based on the Memorandum in Support of Motion and Exhibit A, and the pleadings, records and files of the Commission.

DATED: Honolulu, Hawai'i, July 19, 2016



WILLIAM W.L. YUEN
Attorneys for Petitioner

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

Y-O LIMITED PARTNERSHIP

To Amend the Agricultural Land Use District Boundary to the Urban Land Use District for Approximately 408.719 Acres of Land at Kaloko and Kohanaiki, North Kona, Hawaii, Hawaii TMK Nos.: 7-3-09:19, 20, 32, and 57 to 62.

DOCKET NO. A81-525

**MEMORANDUM IN SUPPORT OF
MOTION**

MEMORANDUM IN SUPPORT OF MOTION

On January 20, 1983 the Land Use Commission of the State of Hawaii issued its Findings of fact, Conclusions of Law and Decision and Order (the "Decision and Order") in the above-captioned docket, reclassifying approximately 408.719 acres of land from the State Land Use agricultural district to the State Land Use Urban District in two increments, subject to certain conditions. Phase I consists of approximately 213.473 acres.

Condition 1 of the Decision and Order was amended by Order Granting Motion for Second Extension of Time to Apply for Redistricting of Phase II and Amending Conditions of the Decision and Order dated January 20, 1983, and June 13, 1990, as entered by the Commission on November 17, 1992 (as amended, the "Affordable Housing Condition"). As amended the Affordable Housing Condition requires Owner:

. . . to provide housing opportunities for low and moderate income residents, by offering for sale, on a preferential basis, on its own or in cooperation with both the (Hawaii) Housing Finance and Development Corporation ("HHFDC") and the County of Hawaii ten per cent (10%) of the lots or houses and lots to be developed on the subject property, to residents of the State of Hawaii of low and moderate family income as

determined by HHFDC and the County of Hawaii from time to time. The preferential lots or houses and lots shall be offered for sale at prices not exceeding prices that enable such purchasers to qualify for and obtain state-assisted financing (e.g., Hula Mae) or federally-insured or assisted financing (e.g., FHA Section 245 Program) intended to encourage home ownership by low and moderate income families.

RCFC Kaloko Heights, LLC, a Delaware limited liability company, successor in interest to Y-O Limited Partnership and Successor Petitioner (“Petitioner”) in this Docket, proposes to satisfy the Affordable Housing Condition for Phase I by donating a parcel of land containing approximately 10.775 acres of land, identified as Hawaii Tax Map Key Nos. 7-3-09:32 (the “Affordable Housing Parcel”) to Hawaii Island Community Development Corporation, a Hawaii nonprofit corporation (“HICDC”). HICDC is a Hawaii Island based developer of affordable housing with a track record of developing over 300 affordable housing units on Hawaii Island.

HICDC will, with the assistance of the County of Hawaii Office of Housing and Community Development (“OHCD”) and HHFDC, develop at least 80 housing units, including self-help housing units (the “Affordable Units”) on the Affordable Housing Parcel to be rented or sold to Hawaii residents of low or moderate family income (below 140% of the annual median income for the County of Hawaii as determined by the U.S. Department of Housing and Urban Development). Under one financing program HICDC would initially rent the Affordable Unit, but could subsequently offer the Affordable Units for sale to low and moderate income families. A copy of the Affordable Housing Agreement between Petitioner and HICDC is attached as Exhibit A to this Motion.

Petitioner requests the Commission order that a donation by Petitioner of the Affordable Housing Parcel to HICDC satisfies the requirements of the Affordable Housing Condition for 800 houses and house and lot packages in Phase I of the Petition Area, and that the Commission orders the Affordable Housing Condition for Phase I be deemed satisfied.


Petitioner and HICDC estimate that HICDC can build a minimum of 80 Affordable Units on the Affordable Housing Parcel. Petitioner estimates that Petitioner can develop a maximum of 700 lots and houses and lots on Phase I, including the Affordable Units. Assuming the maximum 775 units are built Petitioner would be required to build 78 Affordable Units in Phase I, leaving a surplus of two Affordable Units that Petitioner desires to have credited to Petitioner's obligation to build Affordable Units in Phase II. Thus Petitioner requests that the Commission's order should permit Petitioner to apply the excess above the mandatory number of Affordable Units built in Phase I to Petitioner's obligation to satisfy the Affordable Housing Condition in Phase II.

Petitioner would impose a condition on the donation that only Affordable Units be built and sold or rented on the Affordable Housing Parcel. Petitioner would also donate to HICDC sufficient water credits for 80 units.

Petitioner and HICDC believe this cooperative Agreement is an appropriate way to address the affordable housing needs for West Hawaii, while also providing the opportunity for lease or purchase of Affordable Units, and for Petitioner to satisfy the Affordable Housing Condition. Before donating the land to HICDC Petitioner and HICDC desire assurance from the Commission that this proposal will be an acceptable method of satisfying the Affordable Housing Condition. Absent a release Petitioner must retain an interest in the Affordable Housing Parcel to assure that HICDC will develop the Affordable Units.

HICDC also desires to receive the release, because it must expend significant predevelopment expenses on this affordable housing project. HICDC may be reluctant to expend funds to develop the Affordable Units if Petitioner retains an interest in the Affordable Housing Parcel, because HICDC's investment would be at risk.

DATED: Honolulu, Hawai'i, July 19, 2016



WILLIAM W.L. YUEN
Attorneys for Petitioner

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup () To:

Nakamoto, Okamoto & Yamamoto
187 Kapiolani Street
Hilo, HI 96720

TITLE OF DOCUMENT:

KALOKO HEIGHTS AFFORDABLE HOUSING AGREEMENT

PARTIES TO DOCUMENT:

Parties: RCFC KALOKO HEIGHTS, LLC, a Delaware limited liability company
whose mailing address is 10100 Santa Monica Blvd, Suite 1000, Los
Angeles, California 90067; and

HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION,
a Hawaii non-profit corporation, whose mailing address is 100 Pauahi
Street, Suite 204, Hilo, Hawaii 96720.

Affects: Hawaii TMK 7-3-09:32

This document
contains ____ pages.

AFFORDABLE HOUSING AGREEMENT

This Affordable Housing Agreement (this “Agreement”) is made effective July ___, 2016 (the “Effective Date”), between RCFC KALOKO HEIGHTS, LLC, a Delaware limited liability company whose mailing address is 10100 Santa Monica Boulevard, Suite 1000, Los Angeles, California 90067 (the “Owner”), and HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION, a Hawaii non-profit corporation, whose mailing address is 100 Pauahi Street, Suite 204, Hilo, Hawaii 96720 (the “HICDC”).

I. RECITALS

1.1 The Affordable Housing Parcel. Owner is the owner of certain real property in Kaloko and Kohanaiki, North Kona, Hawaii, identified as Hawaii Tax Map Key Nos. 7-3-09:19, 20, 32 and 57 to 62 (“Phase I of Kaloko Heights”). This Agreement concerns Lot 1 of the Kaloko Heights Subdivision, area approximately 10.775 acres, identified as Hawaii Tax Map Key Nos. 7-3-09:32, and more particularly described in Exhibit A attached (the “Affordable Housing Parcel”). The Affordable Housing Parcel is located Makai or west of the planned Holoholo Road Extension from Hina Lani Street to Kaiminani Road (the “Road Extension”).

1.2 Land Use Commission Affordable Housing Condition. The Land Use Commission of the State of Hawaii (the “LUC”), in Docket A81-525 reclassified Kaloko Heights from the State Land Use Agricultural District to the State Land Use Urban District in increments, subject to various conditions, including Condition 1, as amended by Order Granting Motion for Second Extension of Time to Apply for Redistricting of Phase II and Amending Conditions of the Decision and Order dated January 20, 1983, and June 13, 1990, as entered by the LUC on November 17, 1992 (as amended, the “Affordable Housing Condition”). The Affordable Housing Condition requires Owner:

. . . to provide housing opportunities for low- and moderate-income residents, by offering for sale, on a preferential basis, on its own or in cooperation with both the Hawaii Housing Finance and Development Corporation (“HHFDC”) and the County of Hawaii (the “County”) Office of Housing and Community Development (“OHCD”) ten percent (10%) of the lots or houses and lots to be developed on the subject property, to residents of the State of Hawaii of low- and moderate-income as determined by HHFDC and OHCD from time to time. . . .

1.3 County Affordable Housing Condition. The County of Hawaii approved Change of Zone Ordinance 83-63, as amended by Ordinance No. 86-91, rezoning Phase I of Kaloko Heights to the County residential and open zones, and imposed as Condition P an affordable housing requirement corresponding to the Affordable Housing Condition (the “County Affordable Housing Condition”).

1.4 Owner’s Development. Owner proposes to develop a maximum of 1,360 houses and lots in Kaloko Heights, inclusive of HICDC’s Affordable Housing Project described below.

1.5 HICDC. HICDC is a Hawaii non-profit corporation engaged in developing housing for low- and moderate-income households. Since its inception, HICDC has developed

and operated more than 300 low-income rental housing units for Hawaii residents in the Districts of North Kona, North Kohala, South Kohala, South Hilo and Puna on the Island of Hawaii.

1.6 The Affordable Housing Project. HICDC proposes to develop an affordable housing project (the “Affordable Housing Project”) consisting of at least eighty (80) units of housing on the Affordable Housing Parcel including : (1) lease-to-purchase units for low- to moderate-income households (the “Lease-to-Purchase Units”), (2) self-help housing units (the “Self-Help Units”), and/or (3) other forms of rental housing or housing ownership for low- to moderate income household (the “Other Affordable Units”). HICDC would own and operate the Lease-to-Purchase Units as a rental housing project then sell the Lease-to-Purchase Units to qualifying low- to moderate-income households following the expiration of the 15-year tax credit program compliance period.

1.7 Cooperation. Owner and HICDC desire to work together to develop the Affordable Housing Project on the Affordable Housing Parcel, subject to the terms and conditions in this Agreement and in order to satisfy the Affordable Housing Condition and the County Affordable Housing Condition.

II. DEVELOPMENT CONCEPT

The following is a description of HICDC’s Affordable Housing Project.

2.1 Location of the Affordable Housing Project. HICDC proposes to develop the Lease-to-Purchase Units, Self-Help Units and Other Affordable Units on the Affordable Housing Parcel. HICDC agrees to construct and offer for rent or sale not less than eighty (80) Lease-to-Purchase Units, Self-Help Units and Other Affordable Units on the Affordable Housing Parcel.

2.2 The Lease-to-Purchase Units. HICDC agrees to develop at least eighty (80) Lease-to-Purchase Units and Other Affordable Units on the Affordable Housing Parcel. Owner’s deed to HICDC (the “Deed”) will impose a covenant on the Affordable Housing Parcel to require the rental and sale of the Lease-to-Purchase Units, Self-Help Units and Other Affordable Units on the Affordable Housing Parcel to low- and moderate-income families whose incomes are less than one hundred forty percent (140%) of the median income for a household in the County (the “Median Income”) as determined annually by the U.S. Department of Housing and Urban Development (“HUD”). HICDC expects to finance construction of the Lease-to-Purchase Units using low income housing tax credits, bonds and loans, and other available funds. The income restriction covenant will be released upon the execution of an appropriate agreement between HICDC and OHCD imposing an income restriction on the rental or sale of Lease-to-Purchase Units and Other Affordable Units on the Affordable Housing Parcel.

2.3 Future Sale of the Lease-to-Purchase Units. Following the expiration of the 15-year low income housing tax credit compliance period, HICDC contemplates offering the Lease-to-Purchase Units for sale. Any offer for sale will be made in compliance with Chapter 11, Hawaii County Code, so the Lease-to-Purchase Units are offered for sale to qualifying low- and moderate-income households.

2.4 The Self-Help Housing Units. HICDC may develop Self-Help Units on the Affordable Housing Parcel. HICDC will manage sweat equity contribution by participating

households in HICDC's mutual self-help housing program for the Self-Help Units. HICDC anticipates financing the construction of units using the U.S. Department of Agriculture-Rural Development Section 502 Single Family Direct Home Loan Program in order to be able to offer Self Help Units for sale to qualifying participating households. HICDC would sell the self-help housing units to qualifying low-to moderate-income home buyers. HICDC also sponsors self-help housing projects in which participating households receive training in basic construction skills and then cooperatively provide labor to construct single family dwellings.

2.5 Other Affordable Units. HICDC may also develop Other Affordable Units on the Affordable Housing Parcel, using other affordable housing financing programs.

2.6 Post-Closing Obligations. HICDC agrees to perform the obligations described in Article IX, which covenants shall survive delivery of the Deed.

III. DONATION

3.1 Offer to Donate. By execution of this Agreement, Owner offers to donate, give, assign, transfer and convey to HICDC, all of Owner's right, title and interest in and to the Affordable Housing Parcel, upon the representations, warranties, covenants, agreements, reservations, terms and conditions contained in this Agreement and any exhibit or other document specifically incorporated by reference.

3.2 Acceptance of Donation. HICDC agrees to accept and acquire from Owner, all of Owner's right, title and fee simple interest in and to the Affordable Housing Parcel, upon and subject to HICDC's right to conduct due diligence, and to the representations, warranties, covenants, agreements, reservations, terms and conditions contained in this Agreement, the Deed and any exhibit or other document specifically incorporated by reference. This offer shall be accepted by HICDC by delivering executed copies of this Agreement to Owner and to Title Guaranty Escrow Services, Inc., Hilo Branch ("Escrow"). Delivery may be made by facsimile, or electronic mail, with written copies to follow.

3.3 Consideration. Owner and HICDC agree that the consideration for the donation of the Affordable Housing Parcel shall be HICDC's undertaking to develop at least 80 Lease-to-Purchase Units, Self-Help Units and Other Affordable Units on the Affordable Housing Parcel, in satisfaction of Owner's Affordable Housing Condition and County Affordable Housing Condition for 800 housing units to be constructed in Kaloko Heights. For conveyance tax and other tax related purposes, Owner and HICDC agree to use the January 1, 2016, County tax-assessed value of the Affordable Housing Parcel.

3.4 Approval by OHCD and the LUC. Owner shall not be obligated to convey the Affordable Housing Parcel to HICDC under this Agreement until: (a) OHCD has entered into an agreement to issue the Affordable Housing Credits for the Lease-to-Purchase Units, Self-Help Units and Other Affordable Units to HICDC, who will in turn assign the Affordable Housing Credits to Owner, and (b) the LUC has issued an order accepting Owner's donation of the Affordable Housing Parcel to HICDC for development of the Affordable Housing Project as having satisfied the Affordable Housing Condition for 800 total units in Phase I and Phase II, and releasing the Affordable Housing Condition for Phase I. Owner will apply to the LUC for

such determination and order, and Owner and HICDC shall exercise their best efforts to obtain the approvals described in this Section 3.4 and Section 3.5 as expeditiously as possible.

3.5 Approval by County Council. In order to develop the Affordable Housing Project HICDC will, in cooperation with OHCD, request a preemption from certain statutes, ordinances and rules regarding zoning and land use pursuant to HRS §201H-38. Such a preemption is necessary in order allow HICDC to develop housing on an approximately five (5) acre portion of the Affordable Housing Parcel that is designated in the Open Zoning District. The County of Hawaii Council (the "County Council") must approve the Affordable Housing Project, including the preemption, by resolution (the "County Preemption"). Owner will consent to the filing of an application for preemption.

IV. HICDC'S DUE DILIGENCE PERIOD

4.1 Due Diligence Period. HICDC's obligation to accept the donation of the Affordable Housing Parcel is conditioned upon and subject to HICDC's due diligence of the Affordable Housing Parcel under this Article III. Owner and HICDC agree that the Due Diligence Period shall begin on the Effective Date, and continue until 4:00 p.m. Hawaii Standard Time, on the thirtieth (30th) day following the Effective Date, unless HICDC shall waive the Due Diligence Period by written notice to Owner and Escrow given prior to the expiration of the Due Diligence Period.

4.2 HICDC's Activities.

(a) OHCD Agreement. HICDC shall enter into an agreement with OHCD (the "County Housing Agreement") in which agreement OHCD: (i) recognizes Owner's donation of the Affordable Housing Parcel for HICDC's development of the Affordable Housing Project as having satisfied the County Affordable Housing Condition for 800 total units in Phase I and Phase II, and (ii) agrees to assist in development of the Affordable Housing Project.

(b) HICDC's Due Diligence Activities. HICDC shall review the title and suitability of the Affordable Housing Parcel for the development of the Affordable Housing Project. HICDC will share with Owner the information that HICDC acquires, and HICDC shall consult with Owner on any modifications needed for the Affordable Housing Parcel in light of HICDC's review.

4.3 Inspection.

(a) Right of Entry. Commencing on the Effective Date and continuing until the Closing Date, HICDC and HICDC's employees, representatives, agents and consultants may enter upon the Affordable Housing Parcel during normal business hours for any and all purposes, including, but not limited to, conducting inspections, testing and surveying. HICDC may prepare an ALTA survey of the Affordable Housing Parcel.

(b) Conditions of Entry. Owner will grant HICDC and any of HICDC's representatives' entry on the Affordable Housing Parcel. Any such entry or inspection shall be at HICDC's sole cost and expense, and HICDC agrees to indemnify and hold Owner harmless from any loss, liability, damages, cost and expense, including, without limitation, reasonable

attorneys' fees, relating to any damage to, or death or bodily or personal injury on, the Affordable Housing Parcel caused by such entry, inspection and testing. HICDC shall permit no lien or other charge of any kind whatsoever to be placed upon the Affordable Housing Parcel by any engineer, consultant or other person employed by HICDC for the purpose of examining, inspecting or testing the Affordable Housing Parcel. Prior to the last day of the Due Diligence Period, HICDC shall promptly discharge any such lien or other charge of any kind on the Affordable Housing Parcel by paying the amount claimed, and HICDC agrees to indemnify and hold Owner harmless for any loss, liability, cost and expense, including, without limitation, reasonable attorneys' fees incurred by Owner in connection with HICDC's inspection of the Affordable Housing Parcel and of Owner's documents and records. HICDC shall: (a) perform all due diligence activities in a safe manner, using due care and diligence in entering upon the Affordable Housing Parcel; (b) not allow any dangerous or hazardous condition caused by HICDC to continue beyond the completion of such studies and inspections; (c) comply with applicable laws and government regulations; (d) give Owner at least forty-eight (48) hours' notice in advance of any intended inspection or entry; (e) obtain all permits required to perform such inspections; and (f) obtain Owner's prior written consent to any invasive testing. After each entry upon the Affordable Housing Parcel, HICDC will restore the Affordable Housing Parcel as nearly as reasonably possible to its condition immediately prior to such entry and remove any and all debris and litter that may result from such entry. HICDC agrees that any equipment of HICDC brought onto the Affordable Housing Parcel shall be at the sole risk of HICDC.

(c) Insurance. HICDC and any consultant performing work on or entering the Affordable Housing Parcel will maintain commercial general liability insurance with respect to the Affordable Housing Parcel. This insurance shall provide coverage for bodily injury and Affordable Housing Parcel damage liability; personal injury liability; liability assumed under an insurance contract; independent contractor's liability; and fire damage liability for buildings and improvements only. If HICDC, or any independent contractor, engages in any construction, demolition or excavation operations, any policy or policies covering these operations shall be endorsed to provide coverages for explosion, collapse and underground hazards. Owner shall be named as an Additional Insured under HICDC's commercial liability insurance policy as provided under the standard Insurance Service Office ("ISO") endorsement CG 20 24 entitled: "Additional Insured--Owners or Other Interests From Whom Land Has Been Leased", or its equivalent. The policy or policies of insurance shall provide coverages on an "occurrence" basis (not on a "claims made" form) and shall provide limits of no less than the following:

General Aggregate Limit:	\$2,000,000
Personal Injury Limit:	\$2,000,000
Each Occurrence Limit:	\$2,000,000
Fire Damage Limit:	\$100,000

(d) Mechanic's Liens. HICDC will keep the Affordable Housing Parcel free and clear of any mechanic's and materialmen's lien. If an application for mechanic's and materialmen's lien is filed, HICDC will promptly discharge any such lien or other charge of any kind on the Affordable Housing Parcel by paying the amount claimed, and HICDC agrees to indemnify and hold Owner harmless for any loss, liability, cost and expense, including, without

limitation, reasonable attorneys' fees incurred by Owner in connection with HICDC's entry on the Affordable Housing Parcel.

(e) Owner's Cooperation. Owner agrees to instruct Owner's employees and agents to cooperate with and provide reasonably requested information in response to any inquiries made by HICDC or its representatives.

4.4 HICDC's Right to Terminate During the Due Diligence Period. Owner and HICDC agree that HICDC, in HICDC's sole discretion, may terminate this Agreement at any time prior to 4:00 p.m. on the last day of the Due Diligence Period, by written notice delivered to Owner and Escrow prior to 4:00 p.m. on the last day of the Due Diligence Period. In the event the last day of the Due Diligence Period is not a Business Day, the Due Diligence Period shall end on the next following Business Day. If HICDC exercises HICDC's right of termination, Owner and HICDC agree that: (a) HICDC shall return to Owner all documents and records regarding the Affordable Housing Parcel, including, without limitation, the results of tests, surveys and studies performed by HICDC or on behalf of HICDC; (b) HICDC shall maintain and preserve the confidential nature of the information acquired by HICDC during HICDC's due diligence in connection with this Agreement; and (c) HICDC shall pay any Escrow termination fee. Owner and HICDC shall have no further obligations to each other under this Agreement except for obligations HICDC may have incurred during the Due Diligence Period which shall survive such termination. If HICDC does not exercise HICDC's right of termination, this Agreement shall become a binding agreement between Owner and HICDC without further action on the part of Owner, subject to all terms and conditions contained in this Agreement. If HICDC terminates this Agreement pursuant to this Section, HICDC shall destroy or return copies of all records to Owner. HICDC shall also give Owner copies of all third party reports and studies.

4.5 Confidentiality. HICDC agrees that HICDC's entry upon the Affordable Housing Parcel, and HICDC's inspection of the documents and records shall be without material interference to the Affordable Housing Parcel, and that any entry by HICDC or HICDC's representatives shall be in a discreet and unobtrusive manner and carried out in such a way as to preserve the confidential nature of the information acquired by HICDC during HICDC's due diligence in connection with this Agreement. HICDC agrees to maintain the confidentiality of such information; provided however, HICDC may share relevant information with its attorneys, lender and consultants.

V. OWNER'S REPRESENTATIONS AND WARRANTIES

Owner makes the following representations and warranties to HICDC, which representations and warranties are true and correct as of the date of this Agreement.

5.1 Legal Status. Owner is a Delaware limited liability company duly organized, validly existing, in good standing in the State of Delaware, and qualified to do business in the State of Hawai'i.

5.2 Powers. The execution and delivery by Owner of this Agreement, and the doing and performance of all acts provided in this Agreement to be done and performed by Owner are within the powers of Owner.

5.3 Authorization. The execution, delivery and performance of this Agreement has or by the date on which the Deed conveying the Affordable Housing Parcel will be filed with the Assistant Registrar of the Land Court of the State of Hawai'i, or recorded in the Bureau of Conveyances of the State of Hawai'i, as appropriate (the "Closing Date"), which Closing Date will occur on or before thirty (30) days following the latter to occur of: (a) the expiration or sooner termination of the Due Diligence Period, or (b) the filing by the LUC of the order described in Sections 3.4 and Section 7.2, will have been duly authorized by the Member of Owner. The consummation of the transaction described in and by this Agreement does not conflict with and is not in violation of any provision of law, court order, or of Owner's Operating Agreement, and will not result in a breach or violation of, or constitute an event of default by Owner in the observance, performance or fulfillment of any obligation, covenant or condition contained in any agreement, contract, bank loan agreement, lease, mortgage, indenture, judgment, decree, order, or credit agreement or other instrument to which Owner is a party or by which Owner may be bound or affected, or result in, or require the creation or imposition of any lien, charge or encumbrance upon or with respect to the Affordable Housing Parcel or any assets of Owner.

5.4 Validity. This Agreement is a valid and binding agreement of Owner and is enforceable in accordance with its terms.

5.5 Title to the Affordable Housing Parcel. Owner has and shall on the Closing Date have good and marketable fee simple title to the Affordable Housing Parcel. Owner has no knowledge of any rights in favor of any third party, which would adversely affect the Affordable Housing Parcel, except as stated in a preliminary title report on the Affordable Housing Parcel (the "Title Report"). On the Closing Date the Affordable Housing Parcel will be free and clear of all claims, liens, charges and encumbrances made or suffered by Owner except for items shown on the Title Report and not provided to be released pursuant to Section 8.2.

5.6 No Condemnation Pending or Threatened. To the best of Owner's knowledge, there is no pending or threatened condemnation, eminent domain or similar proceeding affecting the Affordable Housing Parcel.

5.7 Real Estate Broker. Owner has not retained any real estate broker, finder or agent and has not agreed to pay or otherwise incur any other brokerage fee, finder's fee or commission with respect to the transaction contemplated by this Agreement.

5.8 Status as a United States Entity. Owner is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

5.9 Status as a Hawai'i Entity. Owner is a resident person within the meaning of H.R.S. §235-68, as amended, as a foreign limited liability company qualified to do business in Hawai'i.

VI. HICDC'S REPRESENTATIONS AND WARRANTIES

HICDC represents and warrants to Owner (the truth and accuracy of each representation on the Closing Date shall constitute a condition precedent to Owner's obligations under this Agreement) that:

6.1 Legal Status. HICDC is a Hawaii nonprofit corporation.

6.2 Authorization. The execution, delivery and performance of this Agreement have or by the Closing Date will have been duly authorized by the Board of Directors of HICDC.

6.3 Validity. This Agreement is a valid and binding agreement of HICDC and is enforceable in accordance with its terms.

6.4 HICDC's Acceptance of the Affordable Housing Parcel. HICDC SPECIFICALLY ACKNOWLEDGES THAT OWNER IS DONATING AND HICDC IS ACCEPTING THE AFFORDABLE HOUSING PARCEL ON AN "AS IS" AND "WHERE IS" BASIS AS TO ITS TOPOGRAPHY AND PHYSICAL CONDITIONS, AND ZONING AND LAND USE RESTRICTIONS, WITHOUT RELIANCE ON ANY REPRESENTATION, WARRANTY, OR GUARANTY BY OWNER AS TO QUANTITY, QUALITY, CHARACTER, CONDITION, SIZE, KIND, OR FITNESS FOR ANY PARTICULAR PURPOSE.

6.5 Real Estate Broker. HICDC has not retained any real estate broker, finder or agent and has not agreed to pay or otherwise incur any other brokerage fee, finder's fee or commission with respect to the transaction contemplated by this Agreement.

VII. CONDITIONS PRECEDENT TO CLOSING

Prior to the Closing Date, Owner and HICDC will obtain the following approvals as a condition precedent to Owner's obligation to convey the Affordable Housing Parcel and HICDC's acceptance of the Affordable Housing Parcel:

7.1 OHCD Agreement. Prior to the Closing Date, HICDC into must enter into the County Housing Agreement with OHCD.

7.2 Approval of the LUC. Owner's obligation to donate the Affordable Housing Parcel to HICDC under this Agreement is expressly conditioned upon prior to the Closing Date the LUC issuing an order accepting Owner's donation of the Affordable Housing Parcel for HICDC's development of the Affordable Housing Project as having satisfied the Affordable Housing Condition for 800 total units in Phase I and Phase II, and releasing the Affordable Housing Condition for Phase I. Owner may terminate this Agreement if the LUC fails to issue such an order by December 31, 2016.

7.3 Approval of the County Council. Prior to the Closing Date the County Council must approve the County Preemption. Owner and HICDC may waive the requirement that the County council approve the County Preemption prior to the Closing Date.

7.4 Survey of the Affordable Housing Parcel. HICDC may prepare a ALTA survey of the Affordable Housing Parcel in order that HICDC may obtain an ALTA policy of title insurance on the Affordable Housing Parcel.

VIII. CLOSING

8.1 The Closing Date. The donation of the Affordable Housing Parcel shall occur on the Closing Date. Owner and HICDC shall attempt to schedule the Closing Date on or before September 30, 2016. This Agreement shall terminate if the Closing Date has not occurred on or before June 30, 2017.

8.2 Closing Requirements. Closing of this transaction shall occur at 8:01 a.m. on the Closing Date. Owner and HICDC shall execute or cause to be executed and deposited to Escrow, if appropriate, the Deed and all other documents required for closing on or before 10:00 a.m. two (2) Business Days prior to the Closing Date. Owner and HICDC shall also pay all sums to Escrow, including closing costs described in Section 8.3 of this Agreement by such same time and date.

8.3 Conveyance of the Affordable Housing Parcel and Title.

(a) The Deed. Owner shall convey good and marketable fee simple title to the Affordable Housing Parcel to HICDC on the Closing Date, by way of the Deed.

(b) Encumbrances. Owner shall convey title to the Affordable Housing Parcel free and clear of all liens, special assessments, encumbrances, mortgages, leases, possessory or other interests, suffered by Owner, except for: (1) non-delinquent taxes and assessments, (2) all items shown in the Title Report, (3) those encumbrances, if any, which have resulted from HICDC's actions, (4) applicable conditions contained in LUC Docket A81-525, and applicable conditions contained in Ordinance Nos. 83-63 and 86-91, (5) applicable covenants to develop the Affordable Housing Parcel pursuant to Article II, and perform Post-Closing Obligations pursuant to Article IX, (6) covenants, conditions and restrictions contained in that certain Grant of Non-Exclusive Easement dated July 21, 2014, and recorded as Document No. A-53240715, (7) encumbrances imposed under this Agreement, and (8) as otherwise agreed to in writing by HICDC. Owner will obtain a release of that certain Mortgage dated May 16, 2005, and recorded as Document No. 2005-114991, in favor of Redwood Capital Finance Company, LLC, and terminate the financing statement recorded as Document No. 2005-114990.

(c) Title Insurance Policy. HICDC shall be entitled to procure an ALTA Owner's policy of title insurance from a title insurer of HICDC's selection, subject only to those liens and encumbrances to be specified in the Title Report not being released pursuant to subsection (b) above.

(d) Condition of Affordable Housing Parcel. It is understood that HICDC has inspected the Affordable Housing Parcel and has agreed to accept the Affordable Housing Parcel as a result of such inspection in an "AS IS" and "WHERE IS" condition on the Closing Date. Such condition is expected to be the same general condition as the Affordable Housing Parcel now is, reasonable wear and tear expected.

8.4 Closing Costs. HICDC shall bear the cost and expense of the title insurance premium for the title insurance policy, any ALTA survey, conveyance tax (if any), and recordation fees. Each party shall bear 50% of Escrow's fees and each party's own attorneys' fees and notary fees.

8.5 Owner's Obligations on the Closing Date. The following actions and transactions shall be the obligations of Owner, and the full performance of each by Owner or waiver by HICDC shall be conditions to HICDC's performance of HICDC's obligations on the Closing Date:

(a) Satisfaction of Conditions Precedent to Closing. Owner shall have approved the form of the County Housing Agreement between HICDC and OHCD required under Section 7.1, and the LUC shall have issued an order amending the Affordable Housing Condition to approve Owner's donation of the Affordable Housing Parcel and HICDC's development of the Affordable Housing Project as an acceptable means of satisfying the Affordable Housing Condition as required under Section 7.2.

(b) Delivery of Deed. Owner shall execute and deliver to Escrow the Deed to the Affordable Housing Parcel, the Affordable Housing Parcel to be free and clear of all encumbrances made or suffered by Owner, except as provided in Section 5.5 and Section 8.2(b) above. Upon the receipt of the Deed and payment of the costs referred to in Section 8.1, Escrow shall record the Deed.

(c) Title Insurance. A title insurer of HICDC's selection shall be prepared to issue at the Closing Date, the title insurance policy as provided in Section 8.2(c) above.

(d) Delivery of Other Necessary Documents. From time to time at HICDC's request, whether on or after the Closing Date and without further consideration, Owner shall execute and deliver any further instruments or conveyances and transfer and take any other action required to consummate the transaction contemplated by this Agreement.

8.6 Closing Prorations and Adjustments. On 12:01 a.m. of the Closing Date, Affordable Housing Parcel taxes and assessments shall be apportioned or adjusted, as applicable, between HICDC and Owner so that Owner shall have the benefits and burdens of the Affordable Housing Parcel prior to the Closing Date and the HICDC shall have the benefits and burdens of the Affordable Housing Parcel subsequent to the Closing Date. Prorations based on a fiscal year period shall use a 360-day year and prorations based on a monthly period shall use a 30-day month.

8.7 Possession. On the Closing Date Owner shall deliver possession of the Affordable Housing Parcel to HICDC.

IX. POST-CLOSING OBLIGATIONS

9.1 Development of the Affordable Housing Project. HICDC must develop the Affordable Housing Project on the Affordable Housing Parcel. HICDC shall restrict the initial occupancy, rental and sale of the Lease-to-Purchase Units, the Self-Help Units and the Other Affordable Units to low- and moderate-income households whose incomes are less than one hundred forty percent (140%) of the Median Income as determined annually by HUD. HICDC shall also observe and perform the covenants in this Article IX, which covenants shall be incorporated in the Deed.

9.2 Environmental Assessment. HICDC shall be responsible to prepare any environmental assessment or environmental impact statement required to be prepared for the Affordable Housing Project.

9.3 Water Commitments. Within 30 days after the later of: (1) the Closing Date, or (2) the County Council's approval of the resolution approving the Affordable Housing Project, Owner will provide or assign to HICDC eighty (80) County Department of Water Supply water commitments to be used for the Affordable Housing Project. Owner has paid the associated facilities fees so that HICDC will not have to pay such fees. HICDC will pay the cost of installing water lines, pumps, storage facilities and meters necessary to deliver potable water and fire protection to the Affordable Housing Project.

9.4 Wastewater Treatment. HICDC will be responsible for installing wastewater treatment facilities to the Affordable Housing parcel and disposal of wastewater from the Affordable Housing Project.

9.5 Drainage and Utility Service. HICDC will be responsible for providing drainage improvements on the Affordable Housing Parcel and for providing utility service to the Affordable Housing Parcel.

9.6 Temporary Access. Owner has no objection to HICDC obtaining temporary principal driveway access to the Affordable Housing Parcel from Hina Lani Street, subject to the approval of the County of Hawaii. Should the County of Hawaii not allow the temporary principal driveway access from Hina Lani Street, HICDC must extend the temporary principal driveway over a portion of the proposed Road Extension to provide access from Hina Lani Street to the Affordable Housing Parcel. In this event Owner and HICDC shall agree on the length of the driveway over the Road Extension and location of access points.

9.7 Permanent Access to the Affordable Housing Parcel. Owner acknowledges that Owner is responsible for the construction of the permanent Road Extension improvements. Upon completion of the permanent Road Extension improvements fronting all or a portion of the Affordable Housing Parcel, HICDC shall at HICDC's cost, relocate the temporary principal driveway access to a permanent principal driveway access at a location as mutually agreeable to Owner, HICDC and the County of Hawaii.

9.8 Boundary Adjustment. HICDC acknowledges the Northern or Mauka boundary of the Property is the proposed Road Extension as generally illustrated in the map entitled Subdivision of Lot 2, attached as Exhibit B, and that the exact location of the proposed Road Extension is subject to change to accommodate terrain and a widening of the width of the proposed road right of way from 50 feet to 60 feet. HICDC agrees to cooperate and join in any subdivision application and conveyance required to accommodate the construction the Road Extension notwithstanding the boundary of the Affordable Housing Parcel may be adjusted and the area of the Affordable Housing Parcel may be reduced.

9.9 Costs and Expenses. HICDC shall bear all expenses for its due diligence review of the Affordable Housing Parcel, obtaining all permits and approvals, taxes and assessments, design work for its development, and costs of construction, including both on-site and off-site improvements such as drainage, waste water treatment and utility service.

9.10 Affordable Housing Credits. The Affordable Housing Credits to be granted by OHCD to HICDC under this Agreement shall be allocated as follows: (1) 80 Affordable Housing Credits to satisfy the County Affordable Housing Condition; (2) should additional Affordable Housing Credits be earned through the development and sale/rental of Other Affordable Units, the first 15 additional Affordable Housing Credits shall be assigned to Owner at no cost to Owner; (3) the balance of the Affordable Housing Credits shall be retained by HICDC. HICDC will assign Affordable Housing Credits to Owner in a form acceptable to OHCD.

9.11 Declaration of Covenants. Owner may subject the affordable Housing Parcel to a Declaration of Covenants, Conditions and Restrictions (the "CCRs") applicable to all of Phase I of Kaloko Heights. Owner and HICDC agree that the CCRs will subject the Affordable Housing Parcel to reasonable design controls and maintenance obligations to be determined, but will not subject the Affordable Housing Parcel to pay homeowner association maintenance fees.

9.12 Information and Cooperation. Since performance under this Agreement requires the cooperation of both parties, the parties agree that they will keep each other informed on an ongoing basis of their efforts to perform under the Agreement.

9.13 Additional Affordable Housing. Owner and HICDC may amend this Agreement to provide for the development of additional Self-Help Units and Other Affordable Units on additional land in Phase II of Kaloko Heights.

X. EVENTS OF TERMINATION

It is expressly understood the following shall be the remedies in the event of a termination of this Agreement or a dispute:

10.1 Remedies of Owner. In the event the Due Diligence Period has expired without HICDC terminating this Agreement or HICDC waiving its right to terminate this Agreement, and HICDC fails to accept the donation of the Affordable Housing Parcel, Owner may terminate and rescind the Agreement and retain title to the Affordable Housing Parcel.

10.2 Remedies of HICDC. In the event the Due Diligence Period has expired without HICDC terminating this Agreement or HICDC waiving its right to terminate this Agreement, and OHCD has approved the Affordable Housing Project and the LUC has released the Affordable Housing Condition, but Owner fails to perform its obligations to donate the Affordable Housing Parcel pursuant to this Agreement or Owner materially breaches any warranty, representation or agreement provided for in this Agreement, HICDC may either terminate or rescind the Agreement; or file and maintain a claim in arbitration against Owner for specific performance of this Agreement to compel conveyance of the Affordable Housing Parcel, and enforcement of HICDC's other rights under this Agreement.

10.3 Arbitration. Any disagreement, dispute or claim arising under this Agreement provided to be resolved by agreement of the parties or by arbitration which cannot be resolved to the mutual satisfaction of Owner and HICDC, any and all claims, controversies or disputes arising out of or relating to this Agreement, or the breach thereof, including, without limitation, a dispute regarding any Event of Default which remain unresolved after direct negotiations between the parties, shall first be submitted to confidential mediation in accordance with the Rules, Procedures, and Protocols for Mediation of Disputes of Dispute Prevention & Resolution,

Inc. of Honolulu, Hawai'i, or similar organization, then in effect. The parties will attend one or more mediation sessions at a date and location established by the mediator. If any issues, claims or disputes remain unresolved after mediation concludes, the parties agree to submit any such issues to binding arbitration before a single arbitrator, to be appointed by the parties. Owner and HICDC each shall promptly name three (3) such arbitrators and give written notice of appointment to the other party, and any arbitrator named by both parties shall be the arbitrator. In case either party shall fail to name an arbitrator within ten (10) days after such notice of the demand for arbitration and appointment of the arbitrator, either party may request that Dispute Prevention & Resolution, Inc. name the arbitrator. The arbitration proceedings shall be conducted in Hilo, Hawai'i under the Arbitration Rules, Procedures and Protocols of Dispute Prevention & Resolution, Inc., or similar organization in effect at the time the demand for arbitration is made. The arbitrator shall proceed to determine the matter in question. The arbitrator may modify the rules to promote the economical and efficient prosecution of the arbitration, but the arbitrator shall conduct proceedings so that the parties may be represented by counsel and each party has the opportunity to present evidence, to review and respond to any evidence and argument submitted by the other party. The arbitrator shall base his decision upon the evidence presented and applicable law. The decision of the arbitrator shall be final and binding on both parties, their respective legal representatives, successors and assigns, and judgment may be entered thereon in an appropriate court of law pursuant to H.R.S. Chapter 658. Any provision contained in this Section to the contrary notwithstanding, the arbitrator shall not have the authority to determine: (a) any claim for an award of exemplary or punitive damages, or (b) any dispute involving parties other than Owner and HICDC. If a third party is necessary to provide full and complete relief, Owner and HICDC shall litigate such dispute. Owner and HICDC each shall pay one-half (1/2) of the arbitrator's fees, and the dispute resolution organization's charges. Owner and HICDC agree that the arbitrator shall have the authority to award attorney's fees and costs. If the arbitrator chooses not to award attorney's fees and costs, Owner and HICDC shall each bear its own expenses of arbitration, including their own witness and attorneys' fees and costs.

XI. MISCELLANEOUS

11.1 Consents, Waivers, Approvals. Whenever under this Agreement the consent, waiver or approval of any party is required or permitted, such consent, waiver or approval of any party is required or permitted, such consent, waiver or approval shall be evidenced by a writing signed by such party and shall not be unreasonably withheld or delayed. No consent or waiver, express or implied, by Owner or HICDC to or of any breach or default by the other party in the performance of the obligations under this Agreement shall be construed to be a consent or waiver to or of any other or further breach or default. Any delivery or failure on the part of Owner or HICDC to complain of any act or omission by the other party or to declare the other party in default, irrespective of the duration of such failure, shall not constitute a waiver by such party of any of its rights under this Agreement.

11.2 Notices. All notices, demands, documents requests, consents, approvals or other communications which are required or permitted to be given or served under this Agreement shall be in writing and sent by first class, registered, or certified mail, postage prepaid, or by hand delivery, or facsimile telecopier or by electronic mail, with a copy to be sent by first class mail, addressed to the addresses. Any such address may be changed from time to time by serving notice to all other parties as above provided. Service of such notice or demand shall be

deemed complete on the day of actual delivery if by hand, by facsimile telecopier or by electronic mail, or at the expiration of the second day after the date of mailing, whichever is earlier.

If to Owner:

RCFC Kaloko Heights, LLC
10100 Santa Monica Blvd., Suite 1000
Los Angeles, CA 90067
Phone: (916) 952-5600
Attn: Phil Russick
email: prussick@pccpllc.com

With a copy to:

William Moore
159 Halai Street
Hilo, HI 96720
Phone: (808) 987-7336
email: wlmoore@outlook.com

If to HICDC:

Hawaii Island Community Development
Corporation
100 Pauahi Street, Suite 204
Hilo, HI 96720
Phone: (808) 969-1158, Ext. 105
Attn: Keith Kato
email: keith.hicdc@gmail.com

With a copy to:

Nakamoto, Okamoto & Yamamoto
187 Kapiolani Street
Hilo, HI 96720
Phone: (808) 961-0641
Attn: Alan Okamoto
email: alan@noyhawaii.com

11.3 No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute, or be construed to constitute or create, a partnership, joint venture, or lease by and between the parties.

11.4 Inurement. The provisions of this Agreement shall be binding upon and inure to the benefit of Owner and HICDC, and their respective successors, successors in trust and permitted assignees as the context of this Agreement may require.

11.5 Recordation. HICDC may record this Agreement in the Bureau of Conveyances of the State of Hawaii, as an encumbrance on the Affordable Housing Parcel, so long as the LUC has approved satisfaction and release of the Affordable Housing Condition. Owner and HICDC shall promptly execute and record a release of this Agreement upon recordation of the Deed.

11.6 Third Party Beneficiary. This Agreement is made exclusively for the benefit of Developer and County, and no other person or entities shall acquire any rights, powers, privileges, remedies, or claims under this Agreement.

11.7 Entire Agreement, Amendments. This Agreement contains the entire agreement of the parties and superseded any previous discussions or agreements between the parties. This Agreement, or any provision of this Agreement, may not be modified, altered or changed except by written instrument executed by Owner and HICDC.

11.8 Attorney's Fees. In the event that any party brings an action or proceeding against any other party to enforce or to prevent the breach of any provision of this Agreement, or for any other judicial or administrative remedy, then the prevailing party shall be entitled to be reimbursed by the non-prevailing party for all costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorneys' fees and expenses.

11.9 Severability. If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the other provisions of this Agreement will remain unaffected.

11.10 Captions. Section titles or captions contained in this Agreement are inserted as a matter of convenience and for reference only, and do not define, limit, extend or describe the scope of this Agreement or the intent of any provision of this Agreement.

11.11 Identification. Whenever required by the context in which it is used, any pronoun shall include both the singular and plural, and any gender shall include the masculine, the feminine, and the neuter genders.

11.12 Neither Party Deemed Drafter. The parties agree that neither party shall be deemed to be the drafter of this Agreement and further that in the event that this Agreement is construed by a court of law, such court shall not construe this Agreement or any provision of this Agreement against any party as the drafter of this Agreement and shall in no way define, limit or describe the scope or intent of any provision of this Agreement.

11.13 Survival. The Post-Closing Obligations described in Article IX of this Agreement shall survive delivery of the Deed.

11.14 Hawaii Law Applicable. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii. Any dispute under this Agreement shall be resolved in Hilo, Hawaii.

11.15 Time of the Essence. Time is of the essence in each party's observance and performance of their respective obligations in this Agreement.

11.16 Counterparts. This Agreement may be executed in two or more counterparts, and when all counterparts have been executed, each counterpart shall be considered an original, but all counterparts shall constitute one and the same instrument, and in making proof of this Agreement, it shall not be necessary to prove or account for more than one such counterpart. 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.

11.17 Computation of Periods. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time specifies Business Days, provided that if the date of last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday

IN WITNESS WHEREOF, the parties have executed these presents as of the day and year first above written.

RCFC KALOKO HEIGHTS, LLC, a Delaware
limited liability company

By: _____

Name Jed Lassere

Its Authorized Signatory

Owner

HAWAII ISLAND COMMUNITY
DEVELOPMENT CORPORATION, a Hawaii
nonprofit corporation

By: _____

Name _____

Its _____

HICDC

duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

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IN WITNESS WHEREOF, the parties have executed these presents as of the day and year first above written.

RCFC KALOKO HEIGHTS, LLC, a Delaware
limited liability company

By: _____

Name _____

Its Authorized Signatory

Owner

HAWAII ISLAND COMMUNITY
DEVELOPMENT CORPORATION, a Hawaii
nonprofit corporation

By: Keith Kato

Name Keith Kato

Its Executive Director

HICDC

EXHIBIT A

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 8214, Land Commission Award 7715, Apana 11 to Lota Kamehameha) situate, lying and being at Kaloko and Kohanaiki, District of North Kana, Island and County of Hawaii, State of Hawaii, being LOT 1 of the "KALOKO HEIGHTS SUBDIVISION" and thus bounded and described:

Beginning at 1/2" pipe (fnd) the southwest corner of this parcel of land, being also the southeast corner of Lot 7-C-1, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap.1 to Lota Kamehameha and along the north side of Hina Lani Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOANUIAHEA" being 14,637.64 feet south and 13,587.67 feet west and thence running by azimuths measured clockwise from true South:

1. 162° 56' 05" 1141.84 feet along Lot 7-C-1, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
2. 252° 54' 449.69 feet along Lot 2 of Kaloko Heights Subdivision, being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
3. 342° 54' 68.12 feet along Lot 2 of Kaloko Heights Subdivision, being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
4. Thence along Lot 2 of Kaloko Heights Subdivision, being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha, on a curve to the left with a radius of 325.00 feet, the chord azimuth and distance being: 319° 17' 21" 260.34 feet;
5. Thence along Lot 2 of Kaloko Heights Subdivision, being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha, on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 340° 04' 42" 27.99 feet;
6. Thence along Lot 2 of Kaloko Heights Subdivision, being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha, on a curve to the left with a radius of 660.00 feet, the chord azimuth and distance being: 11° 54' 52" 287.15 feet;
7. 359° 21' 40.91 feet along Lot 2 of Kaloko Heights Subdivision, being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;

8. 1° 16' 298.99 feet along Lot 2 of Kaloko Heights
Subdivision, being portions of Grant 2942 to
Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1
to Lota Kamehameha;
9. 359° 21' 280.00 feet along Lot 2 of Kaloko Heights
Subdivision, being portions of Grant 2942 to
Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1
to Lota Kamehameha;
10. Thence along Lot 2 of Kaloko Heights Subdivision, being portions of Grant 2942
to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota
Kamehameha, on a curve to the right with a radius of 20.00 feet,
the chord azimuth and distance being: 43° 47' 18" 28.01 feet;
11. Thence along the north side of Hina Lani Street, on a curve to the left with a
radius of 3040.00, the chord azimuth and distance being: 86° 13'
10" 212.93 feet to the point of beginning and containing an area
of 10.755 acres; more or less.

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. The terms and provisions contained in the following:

DECLARATION OF CONDITIONS dated July 21, 1983, recorded in Liber 17220 at Page 528 and REVISED DECLARATION OF CONDITIONS dated October 5, 1983, recorded in Liber 17375 at Page 591.

Said Declaration was amended by Second Amended Declaration of Conditions dated October 5, 1990, recorded as Document No. 90-167186, by Third Amended Declaration of Conditions dated February 24, 1993, recorded as Document No. 93-038317, and by Amended and Restated Third Amended Declaration of Conditions dated March 23, 1993, recorded as Document No. 93-051522.

3. A 10-foot wide No Vehicular Access Planting Screen Easement along Hina Lani Street as mentioned in AFFIDAVIT OF RYAN M. SUZUKI, dated --- (acknowledged March 23, 2006), recorded as Document No. 2006-085222.
4. MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING dated May 16, 2005, and recorded as Document No. 2005-114989, to secure a loan in the amount of \$25,000,000.00, made by KALOKO HEIGHTS ASSOCIATES, LLC, a Delaware limited liability company, Mortgagor, in favor of REDWOOD CAPITAL FINANCE COMPANY, LLC, a Delaware limited liability company, Mortgagee.

The above Mortgage was assigned, as collateral, by instrument dated May 16, 2005, recorded as Document No. 2005-114991, by and between REDWOOD CAPITAL FINANCE

COMPANY, LLC, a Delaware limited liability company ("Assignor") and U.S. BANK NATIONAL ASSOCIATION for collateral security purposes.

The above mortgage was amended by that certain unrecorded Modification Agreement dated July 28, 2008, executed by KALOKO HEIGHTS ASSOCIATES, LLC, a Delaware limited liability company, "Mortgagor," and REDWOOD CAPITAL FINANCE COMPANY, LLC, a Delaware limited liability company, "Mortgagee," of which a MODIFICATION AGREEMENT (SHORT FORM) is dated as of July 28, 2008, recorded as Document Nos. 2008-124758 through 2008-124759, with Joinder by U.S. BANK NATIONAL ASSOCIATION.

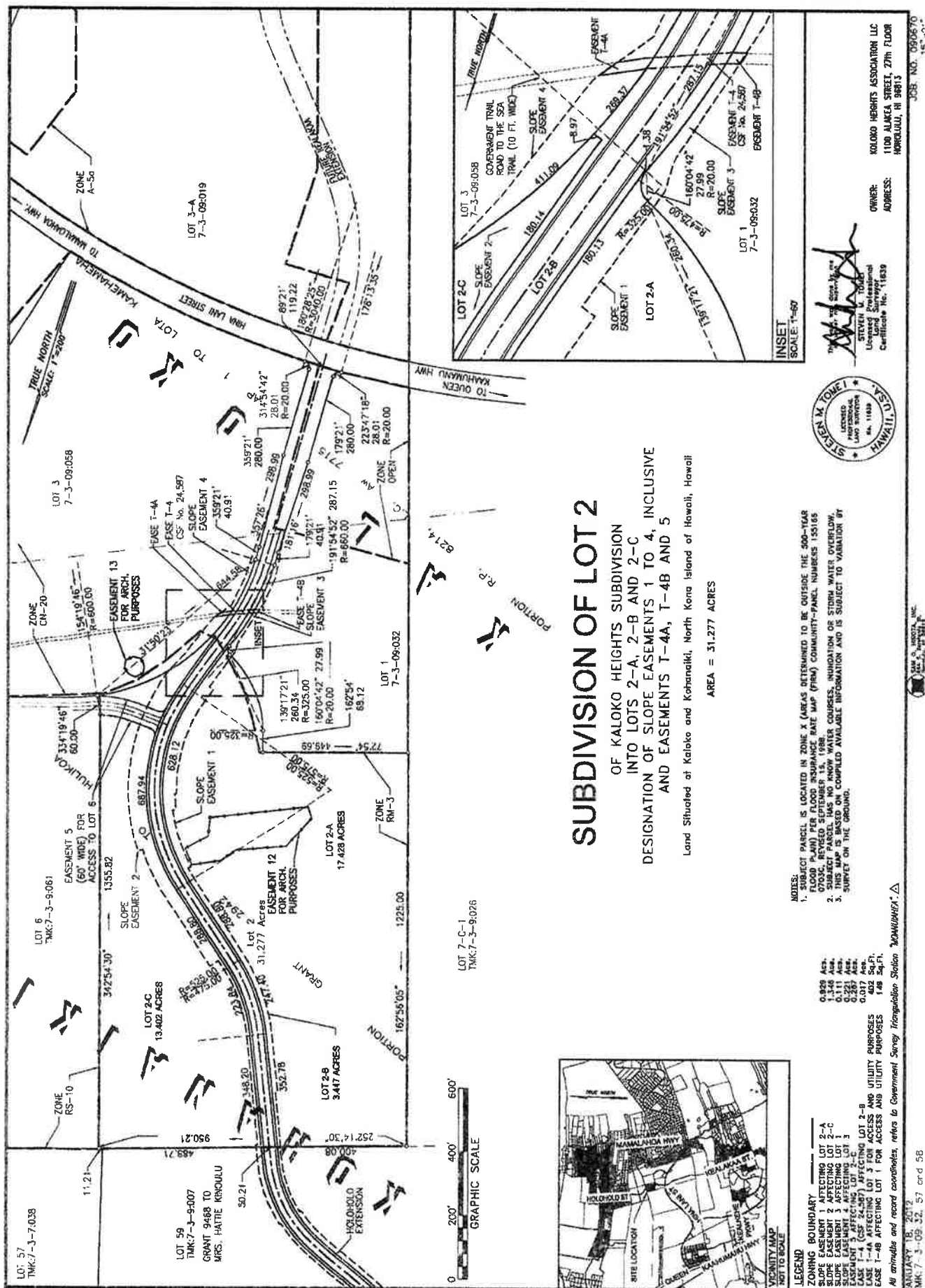
5. UCC FINANCING STATEMENT recorded as Document No. 2005-114990, made by KALOKO HEIGHTS ASSOCIATES, LLC, a Delaware limited liability company, "Debtor," in favor of REDWOOD CAPITAL FINANCE COMPANY, LLC, "Secured Party."

ASSIGNMENT to U.S. BANK NATIONAL ASSOCIATION recorded as Document No. 2005-114992 on June 9, 2005.

CONTINUATION recorded as Document No. 2010-041384 on March 29, 2010.

6. TRAIL, as shown on survey map prepared by R.M. Towill Corporation, dated December 21, 2007.

Hawaii Tax Map Key No.: 7-3-09:32



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

Y-O LIMITED PARTNERSHIP

To Amend the Agricultural Land Use District
Boundary to the Urban Land Use District for
Approximately 408.719 Acres of Land at
Kaloko and Kohanaiki, North Kona, Hawaii,
Hawaii TMK Nos.: 7-3-09:19, 20, 32, and 57
to 62.

DOCKET NO. A81-525

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Motion for an Order Regarding Satisfaction of Affordable Housing Condition* has been duly served on the following parties at their last known addresses by hand delivery, electronic mail or depositing in the U.S. mail, postage prepaid on July 19, 2016.

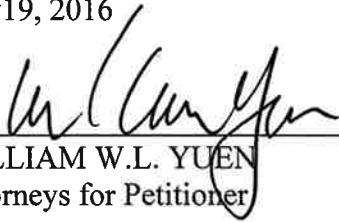
Rodney Funakoshi
Office of Planning
State of Hawai'i
235 Beretania Street, 6th Floor
Honolulu, HI 96813

Duane Kanaha, Director
Planning Department
County of Hawaii
101 Pauahi Street, Suite 3
Hilo, HI 96720

Dawn Takeuchi-Apuna, Esq.
Deputy Attorney General
Commerce and Economic Development
Department of Attorney General
425 Queen Street
Honolulu, HI 96813

Molly A. Stebbins
Office of the Corporation Counsel
County of Hawaii
101 Aupuni Street, Unit 325
Hilo, HI 96720

DATED: Honolulu, Hawai'i, July 19, 2016



WILLIAM W.L. YUEN
Attorneys for Petitioner