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LAND USE COMMISSION
STATE OF HAWAII

2016 SEP 27 P 3: 37

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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

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

**SECOND SUPPLEMENTAL MEMORANDUM IN SUPPORT OF 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 submits this Second Supplemental Memorandum in Support of Motion for an Order Regarding Satisfaction of Affordable Housing Condition to supplement Petitioner's motion filed on July 19, 2016, as supplemented by Supplemental Memorandum in Support of Motion filed on September 1, 2016 (the "Motion"), with the Land Use Commission of the State of Hawaii (the "Commission"). The Motion

requested an order that a donation by Petitioner of a 10.775 acre parcel of land identified as Hawaii Tax Map Key No. 7-3-09:32 (the “Affordable Housing Parcel”) to Hawaii Island Community Development Corporation, a Hawaii nonprofit corporation (“HICDC”), 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 reclassifying Phase I, 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, entered by the Commission on November 17, 1992 (the “Affordable Housing Condition”).

Petitioner now requests that the Commission acknowledge the donation of the Affordable Housing Parcel to HICDC and the development on this parcel by HICDC of affordable housing for rental or sale as a means of satisfying the Affordable Housing Condition .

On January 20, 1983, the Commission reclassified approximately 408.719 acres of land (the “Petition Area”) from the State Land Use Agricultural District to the State Land Use Urban District in two increments, subject to certain conditions. The Commission reclassified the 213.473 acres of land comprising Phase I of the Petition Area to the Urban District, and approved the reclassification of the 195.246 acres of land comprising Phase II of the Petition Area to the Urban District on an incremental basis.

As amended the Affordable Housing Condition presently requires Petitioner 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 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 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.

Petitioner proposes to satisfy the Affordable Housing Condition for Phase I by the donation of the subdivided Affordable Housing Parcel to HICDC, and the development by HICDC of Affordable Housing, for sale or rental. There is a substantial need for affordable rental housing in West Hawaii. HICDC is a Hawaii Island based developer of affordable housing with a track record of developing over 300 affordable housing units throughout Hawaii Island.

HICDC plans, with the assistance of the County of Hawaii Office of Housing and Community Development (“OHCD”), to develop at least 80 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). A copy of the Agreement between Petitioner and HICDC was attached as Exhibit A to the Motion. Before donating the land to HICDC, Petitioner and HICDC desire assurance from the Commission that this proposal will provide an acceptable step towards satisfying the Affordable Housing Condition for Phase I.

Following the filing of the Motion and the Supplemental Memorandum and further discussions with Commission staff, HICDC and OHCD, Petitioner now requests the Commission amend the Affordable Housing Condition to read as follows:

1. Petitioner shall provide housing opportunities for low and moderate income residents, by offering for sale or rental 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 in the Petition Area, to residents of the State of Hawaii of low and moderate family income as determined by HHFDC and the County of Hawaii Office of Housing and Community Development (“OHCD”) from time to time (the “Affordable Housing Requirement”). The preferential lots, houses and lots and rental units (the “Affordable Units”), shall be offered for sale or rent at prices or rents not exceeding prices or rents

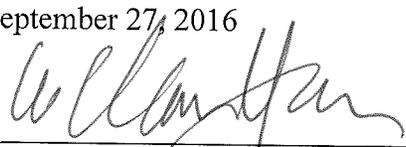
(Affordable Prices”) that enable such purchasers and renters to qualify for and obtain state-assisted financing (e.g., Hula Mae) or federally-insured or assisted financing (e.g., FHA Section 245 Program) intended to encourage home ownership by low and moderate income families, or that provide affordable rental housing opportunities to such families. Petitioner may provide some or all of the Affordable Units through development in the Petition Area in cooperation with Hawaii Island Community Development Corporation, a Hawaii nonprofit corporation (“HICDC”).

Petitioner has imposed a condition on the donation that only Affordable Units be built and sold or rented on the Affordable Housing Parcel. Due to significant infrastructure improvements made by Petitioner the Affordable Housing Parcel is a subdivided lot with access to an improved street. Petitioner will convey the Affordable Housing Parcel with sufficient water credits and water storage for development of at least 80 units.

HICDC is an experienced nonprofit developer of affordable housing. HICDC must expend significant predevelopment expenses on this affordable housing project. Petitioner believes its agreement with HICDC and HICDC’s agreement with the County of Hawaii will provide an appropriate way to address the affordable housing needs of West Hawaii, and for Petitioner to satisfy the Affordable Housing Condition. Petitioner’s agreement with HICDC was previously provided to the Commission as Exhibit A to the Motion. The form of HICDC’s agreement with the County is attached as Exhibit B.

Petitioner believes that the suggested amendment to the Affordable Housing Condition takes into account the foregoing requirements and considerations. Thus Petitioner requests the Commission amend the Affordable Housing Condition to read as described above.

DATED: Honolulu, Hawai`i, September 27, 2016



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CERTIFICATE OF SERVICE

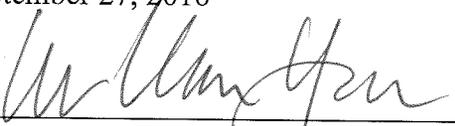
CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Second Supplemental Memorandum in Support of 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 September 27, 2016.

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DATED: Honolulu, Hawai'i, September 27, 2016


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