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Attorneys at Law
A Law Corporation

LAND USE COMMISSION
STATE OF HAWAII
2016 SEP -1 A 11: 33

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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

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

**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 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 (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”).

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 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 donating the subdivided 10.775 acres Affordable Housing Parcel to HICDC. 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 will, with the assistance of the County of Hawaii Office of Housing and Community Development (“OHCD”), 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 Units, but could subsequently offer the Affordable Units for sale to low and moderate income families; under another, HICDC could offer a self-help housing program to low income families. A copy of the Agreement between Petitioner and HICDC was attached as Exhibit A to the Motion.

Following the filing of the Motion and further discussions with Commission staff, HICDC and OHCD, Petitioner 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 ten percent (10%) of the lots and houses and lots to be developed in the Petition Area at prices affordable to residents of the State of Hawaii of low and moderate family income as determined by Hawaii Housing Finance and Development Corporation (“HHFDC”) and the County of Hawaii Office of Housing and Community Development (“OHCD”) from time to time (the “Affordable Housing Requirement”). The preferential lots or houses and lots (the “Affordable Units”) shall be offered for sale at prices or rents not exceeding prices or rents (“Affordable 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 shall satisfy the Affordable Housing Requirement with respect to Phase I of the Petition Area by donating Lot 1 of the Kaloko Heights Subdivision, a 10.775 acre parcel of land in Phase I of the Petition Area 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”). HICDC shall develop and construct at least eighty (80) housing units on the Affordable Housing Parcel, and must offer for sale or rental as Affordable Units all housing units developed on the Affordable Housing Parcel, on its own or in cooperation with OHCD. The Affordable Housing Requirement shall not apply to the remainder of the land comprising Phase I. To the extent ten percent (10%) of the lots and houses and lots developed in Phase I is less than the number of Affordable Units developed on the Affordable Housing Parcel the excess number of Affordable Units shall be credited to Petitioner’s obligation to offer Affordable Units in Phase II of the Petition Area.

Petitioner requests that the Commission recognize that donation of the Affordable Housing Parcel to HICDC satisfies the requirements of the Affordable Housing Condition for Phase I of the Petition Area, prior to the actual development, construction and sale of the Affordable Units.

Before donating the land to HICDC, Petitioner and HICDC desire assurance from the Commission that this proposal will satisfy the Affordable Housing Condition for Phase I. Absent such assurance, Petitioner must retain a reversionary interest in the Affordable Housing Parcel to afford Petitioner the opportunity to develop the affordable Units in the event that HICDC has failed to develop the Affordable Units. HICDC must expend significant predevelopment expenses on this affordable housing project. HICDC has expressed a reluctance to expend funds to develop the Affordable Units if Petitioner retains a reversionary interest in the Affordable Housing Parcel. Petitioner believes the foregoing amendment to the Affordable Housing Condition would allow Petitioner to proceed with development of market price lots and house and lot packages and allow HICDC to proceed with development of the Affordable Housing Parcel, while providing the Commission assurance that the Affordable Housing Condition will be satisfied.

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 will provide the Commission with a copy of the HICDC-County agreement following execution by the County. When read with the Commission's prior orders, these two agreements should provide the Commission with assurance that the Affordable Units for Phase I will be completed.

First, 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.

HICDC is an experienced nonprofit developer of affordable housing. HICDC has access to an experienced team of development consultants. HICDC has experience in assembling the financing necessary to develop affordable housing.

Due to 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. With certain infrastructure improvements already in place, HICDC's ability to develop the Affordable Housing Parcel will not be tied to Petitioner's progress in developing the rest of the Petition Area.

Second, HICDC may only develop Affordable Units on the Affordable Housing Parcel. Section 2.5 of the HICDC-County agreement requires HICDC to complete development of the Affordable Housing Parcel by December 31, 2021. If HICDC fails to complete development by that time, HICDC will be required to convey the Affordable Housing Parcel to OHCD in order that OHCD may complete the development.

Finally, the Commission's Order Granting Petitioner's Motion for Extension of Time to Apply for Redistricting of Phase II filed on December 10, 2012, grants Petitioner an extension until January 20, 2023, to substantially complete development of Phase I. Since the Affordable Housing Parcel remains a part of Phase I, Petitioner retains an interest in having development of the Affordable Housing Parcel completed by the January 20, 2023 date. The December 31, 2021 deadline for HICDC to substantially complete its development of the Affordable Housing Units was determined with Petitioner's January 20, 2023 deadline in mind. Both OHCD and Petitioner

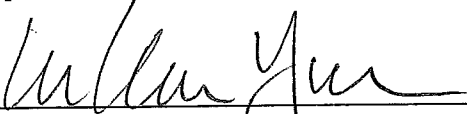
will have an incentive to assist HICDC in the development of the Affordable Housing Parcel should HICDC fail to complete development by the end of 2021.

Finally, if the number of Affordable Units constructed and rented or sold on the Affordable Housing Parcel 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.

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 775 lots and houses and lots in 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. The actual number of lots and houses and lots developed in Phase I will likely be less than 775. Thus, Petitioner requests that the Commission's order 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 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 1, 2016



WILLIAM W.L. YUEN
SARAH CHADWICK COCKE
Attorneys for Petitioner

LAND COURT

REGULAR SYSTEM

Return By Mail Pick-Up To:

HAWAII ISLAND COMMUNITY
DEVELOPMENT CORPORATION
100 Pauahi Street, Suite 204, Hilo, Hawaii, 96720

Attention: Keith Kato
Telephone: (808) 319-2422

TITLE OF DOCUMENT:

AGREEMENT

DEVELOPER: HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION, a
Hawaii non-profit corporation, whose principal place of business and mailing
address is 100 Pauahi Street, Suite 204, Hilo, Hawaii, 96720

COUNTY: COUNTY OF HAWAII, a municipal corporation of the State of Hawaii, whose
principal place of business and mailing address is 25 Aupuni Street, Hilo,
Hawaii, 96720

TAX MAP KEY(S): (3) 7-3-009:032

(This document consists of ___ pages.)

EXHIBIT B

AGREEMENT

This Agreement is made and effective this _____ day of _____, 2016 by and between **HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION**, a Hawaii non-profit corporation, hereinafter referred to as “Developer”, whose principal place of business and mailing address is 100 Pauahi Street, Suite 204, Hilo, Hawaii, 96720, and the **COUNTY OF HAWAII**, a municipal corporation of the State of Hawaii, hereinafter referred to as “County”, whose principal place of business and mailing address is 25 Aupuni Street, Hilo, Hawaii, 96720.

I. RECITALS

- 1.1 Affordable Housing Parcel. RCFC KALOKO HEIGHTS, LLC, a Delaware limited liability company (“Owner”), is the current owner of certain real property in Kaloko and Kohanaiki, North Kona, Hawaii, identified as Hawaii Tax Map Key numbers (3) 7-3-009:019, 020, 032, 057, 058, 059, 060, 061 and 062 (“Kaloko Heights, Phase I”).
- 1.2 Land Use Commission Affordable Housing Condition. The Land Use Commission of the State of Hawaii (“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 Kaloko Heights, 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 “State Affordable Housing Condition”), which 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 (“County”) Office of Housing and Community Development (“OHCD”) 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-income as determined by HHFDC and OHCD from time to time”
- 1.3 County Affordable Housing Condition. The County approved Change of Zone Ordinance 83-63 rezoning Phase I of Kaloko Heights to the County residential and open zones, as amended by Ordinance 86-91, and imposed, as Condition “P” therein, a County affordable housing requirement corresponding to the State Affordable Housing Condition (“County Affordable Housing Condition”). Chapter 11, Article 1 of the Hawaii County Code, relating to Affordable Housing Policy (“Affordable Housing Code”), authorizes the County to enter into this Agreement with the Owner to perform one or any combination of the options for satisfaction of the affordable housing requirements contained in the Affordable Housing Code, Section 11-5, and subject to Condition “P” of

Ordinance 86-91, which requires the development of Affordable Housing Units as follows:

P. “ ... the low and moderate income housing requirement imposed by the State Land Use Commission shall be complied with ...”

- 1.4 Owner’s Development. Owner proposes to develop a maximum of 1,300 houses and lots at Kaloko Heights, Phase I and II, inclusive of units required by the State Affordable Housing Condition and County Affordable Housing Condition.
- 1.5 Developer. Developer is a Hawaii non-profit corporation engaged in developing housing for low- and moderate-income households, and has developed and operated over 500 low-income rental and self-help housing for residents on Hawaii island.
- 1.6 Cooperation. Owner and Developer desire to work together to develop the Affordable Housing Project on the Affordable Housing Parcel, subject to established terms and conditions in order to satisfy the State Affordable Housing Condition and County Affordable Housing Condition. Owner and Developer have evaluated the various options available for development of the Affordable Housing Parcel to satisfy the State Affordable Housing Condition and County Affordable Housing Condition; and
- 1.7 Affordable Housing Project. Developer proposes to develop an affordable housing project (consisting of at least 80 units of affordable housing (“Affordable Housing Units”) offered for homeownership (“Affordable Housing Project”) on the parcel, identified as Tax Map Key number (3) 7-3-009:032, and more particularly described in Exhibit A (“Affordable Housing Parcel”).

Financing options availability may influence whether the Affordable Housing Units will be developed as lease-to-purchase, self-help, or another form of homeownership; and

The Low-Income Housing Tax Credit Program restricts initial use of lease-to-purchase Affordable Housing Units as rental units that serve households earning less than 60% of the area median income (“AMI”) for a family in the County (“Applicant”) as determined annually by the United States (“U. S.”) Department of Housing and Urban Development (“HUD”) and published by the Hawaii Housing Finance and Development Corporation (“HHFDC”), for an initial 15-year compliance period; and

The Developer intends to maximize the development of units that serve households earning less than 60% of the AMI.

II. CONDITION COMPLIANCE

- 2.1 Satisfaction of County Affordable Housing Condition. Developer agrees to develop at least 80 Affordable Housing Units on the Affordable Housing Parcel, which shall be restricted with regard to initial occupancy and/or sale of each Affordable Housing Units in the Affordable Housing Project to low- and moderate-income households with incomes less than 140% of the AMI for an Applicant as determined annually by HUD and published by the County, and subject to the following requirements:

- a. Applicants shall be a citizen of the U. S. or a permanent resident alien that resides in the County at the time of application.
- b. For a period of at least 10 years after purchase of an Affordable Housing Unit (“Affordable Housing Period”), applicants shall agree to abide by the restrictions on use, occupancy and buy-back as required by OHCD (“Resale Restrictions”), and shall agree to execute and record any document that OHCD shall deem necessary to bind the owner and the Affordable Housing Units to comply with such restrictions.
- c. Applicants shall intend to utilize the Affordable Housing Unit as a place of permanent and primary residence, and be owner-occupants during the Affordable Housing Period.
- d. Applicant and/or Co-Applicant must not own more than 51% or more interest in real property suitable for dwelling purposes within one (1) year prior to the date of application.

For any lease-to-purchase Affordable Housing Units developed, any offer for sale will be made in compliance with the Affordable Housing Code, and shall follow the expiration of any applicable financing compliance periods.

- 2.2 Affordable Housing Credits. Upon conveyance of the Affordable Housing Parcel from Owner to Developer, County will award one (1) affordable housing credit (“Credit”) for each of the 80 Affordable Housing Units to be developed, for a total of 80 Credits.

Upon completion of construction of the Affordable Housing Units by Developer, County will assess and award excess affordable housing credits in accordance with Hawaii County Code, Chapter 11.

- 2.3 Marketing Efforts. At least 60 days prior to the commencement of sales for the Affordable Housing Units, Developer shall submit for written approval by OHCD the marketing plan for the Affordable Housing Project (“Marketing Plan”). As part of the Marketing Plan, the sales price and Developer-furnished utilities and other amenities for each Affordable Housing Unit, if applicable, shall be approved by OHCD. OHCD shall act to approve or disapprove the Marketing Plan within 30 days of submittal to OHCD. If OHCD fails to act on the Marketing Plan within the 30-day period, the Marketing Plan shall be deemed approved and Developer may commence with marketing and sales pursuant to the provisions of the Marketing Plan. All Affordable Housing Units marketed must be occupied by eligible Applicants.

Upon the commencement of sales of the Affordable Housing Units, Developer shall submit annual reports to OHCD regarding Developer compliance with the terms of this Agreement, to include without limitation, marketing and sales reports, and documents sufficient to allow OHCD to ensure compliance with the terms of this Agreement.

- 2.4 Release of Condition. Upon conveyance of the Affordable Housing Parcel from Owner to Developer, the County Affordable Housing Condition of Ordinance 83-61, as amended

by Ordinance 86-91, through development of at least 80 Affordable Housing Units on the Affordable Housing Parcel, will be deemed partially satisfied. Upon the determination of compliance with the terms of this Agreement for all of the Affordable Housing Project by OHCD, a Release or a Partial Release of this Agreement, as applicable, shall be executed by the parties hereto and filed by Developer with the Bureau of Conveyances, or with the Land Court of the State of Hawaii, as applicable, provided however, that no Release or Partial Release shall be filed until one or more Declaration(s) of Restrictive Covenants (or similar documents setting forth the Resale Restrictions) shall have been recorded in the Bureau of Conveyances with respect to each of the Affordable Housing Units being released from this Agreement.

- 2.5 Performance Deadline. In the event that Developer fails to timely perform its obligations herein by the established date of December 31, 2021, Developer, by Warranty Deed to the County, shall convey the fee simple interest, free and clear of all liens and encumbrances, in and to the lots designated as Affordable Housing Units within the Affordable Housing Parcel.

III. MISCELLANEOUS

- 3.1 Force Majeure. If the efforts of Developer to complete the design, development and construction of the Affordable Housing Units on the Affordable Housing Parcel are delayed by any of the following (collectively, "Force Majeure"): (a) war, earthquake, fire, flood, volcanic activity or other similar natural disaster, or by general or industry-wide strike in the County, shipping strike in the State of Hawaii or on the continental U. S., or (b) the failure of any government agency(ies) to approve or consent to any matter for which such approval or consent is required within a reasonable time after Developer has made a request therefor despite reasonable efforts on the part of Developer to obtain such consent or approval, then, and in any such event, the time periods set forth in this Agreement for completion of the Affordable Housing Units on the Affordable Housing Parcel shall be extended by the number of days that Developer is delayed as a result of the specified event of Force Majeure.
- 3.2 Inurement. This Agreement shall run with the land of the Affordable Housing Parcel and be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns. This Agreement shall be recorded against the land of the Affordable Housing Parcel by Developer at the Bureau of Conveyances or with the Land Court of the State of Hawaii as applicable, within 30 days after being fully executed by the parties. The parties agree to take such actions and execute whatever other documents as are necessary to effectuate and carry out the intent of this Agreement. This Agreement supersedes all other agreements and understandings (whether oral or written) made heretofore or contemporaneously herewith by the parties. The provisions of this Agreement may not be modified, altered or changed except by another written instrument executed by the parties hereto.
- 3.3 Entitlements. Immediately upon termination, lapse, disapproval or revocation (as applicable) of Developer's zoning change, subdivision plan, or tentative subdivision

approval, this Agreement shall, without any further action on the part of any party hereto, terminate and be of no further force or effect.

3.4 Subordination. Upon the written request of Developer, County may agree to subordinate its rights hereunder to the encumbrance of any mortgages and security agreements to any bank or lender for the Affordable Housing Units and/or Parcel for the purpose of completing construction of the Affordable Housing Units and related infrastructure. If the County consents to such subordination (which consent shall not be unreasonably withheld), it shall execute any further documentation or subordination agreement necessary to carry out the provisions of such subordination.

3.5 Nondiscrimination. In accordance with Executive Order 142 issued on February 11, 2005 by the Mayor of the County, during the performance of this Agreement, Developer hereby agrees as follows:

- a. Developer shall comply with all requirements set forth in Federal and State laws and regulations relative to Title VI of the Civil Rights Act of 1964, as amended, which provide for non-discrimination in Federally assisted programs.
- b. Developer shall not discriminate against any employee or applicant for employment because of race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law. The contractor shall assure that applicants are employed and that employees are treated during employment without regard to race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. The contractor agrees to post in conspicuous places notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
- c. Developer shall in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants shall receive consideration for employment without regard to race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law.
- d. In the event of Developer's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled or suspended in

whole or in part and the contractor may be declared ineligible for further County contracts until such time that the contractor by satisfactory evidence, in good faith, ceases such discriminatory practices or procedures.

- e. Developer who subcontracts any portion of the contract shall assure the County that such subcontractor shall abide by the nondiscrimination provisions stated herein and agrees that any subcontractor who is found in violation of such provisions shall subject the principal contractor's contract with the County to be terminated or suspended pursuant to subsection d above.
- f. Developer may direct any bidder, prospective contractor, or subcontractor to submit a statement in writing signed by an authorized officer, agent, or employee of the contracting party that the signer's practices and policies do not discriminate on the grounds of race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law, and that the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions stated herein.

- 3.6 Counterparts. This instrument may be executed in two (2) or more counterparts, and when all counterparts have been executed, each counterpart shall be considered an original but when assembled shall constitute one and the same instrument, and shall have the same force and effect as though all of the signatories had executed a single signature page. Any unexecuted duplicate pages may be omitted from the assembled original document.
- 3.7 Drafter. The parties agree that no party shall be deemed to be the drafter of this Agreement, and further that in the event this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provisions of this Agreement against any party as the drafter of this Agreement.
- 3.8 Hawaii Law Applicable. This Agreement shall be governed and construed in accordance with the laws of the State of Hawaii.

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IN WITNESS WHEREOF, the parties have executed these presents on the date and year first above-written.

“DEVELOPER”:

HAWAII ISLAND COMMUNITY
DEVELOPMENT CORPORATION
a Hawaii non-profit corporation

By: *Keith Kato*
Keith Kato

Date: 8/23/16

RECOMMEND APPROVAL:

Susan Akiyama
Housing Administrator

Date: _____

“COUNTY”:

COUNTY OF HAWAII

By: _____
Name: _____
Title: _____

Date: _____

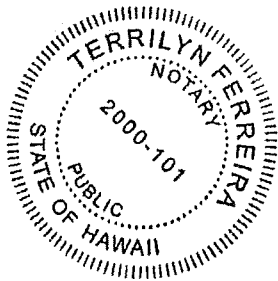
APPROVED AS TO FORM
AND LEGALITY:


By: _____
Deputy Corporation Counsel

Date: _____

STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

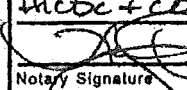
On this 23rd day of August, 2016, before me personally appeared KEITH KATO, — of HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION, a Hawaii non-profit corporation, to me personally known, who, being by me duly sworn or affirmed, did say that he is the Executive Director of HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION, a Hawaii non-profit corporation, and on behalf of the individual and corporation, and said KEITH KATO acknowledged said instrument to be the free act and deed of the individual, corporation, partnership or limited liability company.




Name: Terrilyn Ferreira

Notary Public, State of Hawaii

My commission expires: 3/5/2020

Doc. Date: <u>not dated at time</u>	Pages: <u>10</u>
Notary Name: <u>Terrilyn Ferreira</u>	<u>Third Circuit</u>
Doc. Description: <u>Agreement</u>	
<u>thcdc + cdh - kabko</u>	
	<u>8/23/16</u>
Notary Signature	Date

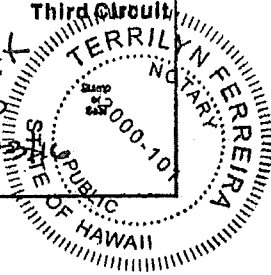


EXHIBIT A

MAP OF AFFORDABLE HOUSING SITE

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

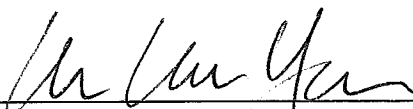
CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Supplemental Memorandum in Support of Motion for an Order Regarding Satisfaction of Affordable Housing Condition and Exhibit B* have 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 1, 2016.

Rodney Funakoshi
Office of Planning
State of Hawai'i
235 Beretania Street, 6th Floor
Honolulu, HI 96813
Rodney.y.funakoshi@dbedt.hawaii.gov
Dawn Takeuchi-Apuna, Esq.
Deputy Attorney General
Commerce and Economic Development
Department of Attorney General
425 Queen Street
Honolulu, HI 96813
Dawn.t.apuna@hawaii.gov

Duane Kanuha, Director
Planning Department
County of Hawaii
101 Pauahi Street, Suite 3
Hilo, HI 96720
Duanekanuha@co.hawaii.hi.us
William V. Brilhante, Jr.
Assistant Corporation counsel
Office of the Corporation Counsel
County of Hawaii
101 Aupuni Street, Unit 325
Hilo, HI 96720
William.brilhante@hawaiicounty.gov

DATED: Honolulu, Hawai'i, September 1, 2016



WILLIAM W.L. YUEN
SARAH CHADWICK COCKE
Attorneys for Petitioner