

WILLIAM W.L. YUEN 1359

DENTONS US LLP
1001 Bishop Street, Suite 1800
Honolulu, Hawai`i 96813
Telephone: (808) 524-1800
Facsimile: (808) 524-4591
Email: william.yuen@dentons.com



Attorney for Petitioner
RCFC KALOKO HEIGHTS, LLC,
KALOKO HEIGHTS B1A HOLDINGS, LLC, and
KALOKO HEIGHTS INVESTORS, LLC

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.: (3) 7-3-09:19, 20 and 57 to 62.

DOCKET NO. A81-525

PETITIONER’S MOTION FOR EXTENSION OF TIME TO APPLY FOR REDISTRICITING OF PHASE II; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF WILLIAM W. L. YUEN; EXHIBITS A-B; CERTIFICATE OF SERVICE

PETITIONER'S MOTION FOR EXTENSION OF TIME TO APPLY FOR REDISTRICITING OF PHASE II

I. RELIEF OR ORDER SOUGHT

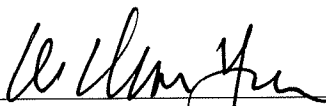
RCFC KALOKO HEIGHTS, LLC, a Delaware limited liability company, KALOKO HEIGHTS B1A HOLDINGS, LLC, a Delaware limited liability company, and KALOKO HEIGHTS INVESTORS, LLC, a Delaware limited liability company, Successor Petitioner (“**Petitioner**”) to Y-O Limited Partnership in the above-captioned docket, by and through its attorneys Dentons US LLP, moves the Land Use Commission of the State of Hawaii (the

"Commission") to issue an order further amending the Decision and Order issued on January 19, 1983, to allow for an extension of time within which an application may be submitted for the redistricting of Phase II. The extension of time being requested is to January 20, 2033, which is ten years from January 20, 2023, the current time for performance under the Commission's *Order Granting Petitioner's Motion for Extension of Time to Apply for Redistricting of Phase II*, issued on December 10, 2012.

II. GROUNDS FOR MOTION

This motion is made pursuant to Chapter 205, Hawaii Revised Statutes ("**HRS**") and §§ 15-15-70, 15-15-78 and 15-15-94 of Title 15, Subtitle 3, Chapter 15 of the Hawaii Administrative Rules ("**HAR**"), the other authorities and arguments stated in the attached Memorandum in Support of Motion, and the pleadings and files herein. Pursuant to HAR § 15-15-70(c), Petitioner requests a hearing on this motion.

DATED: Honolulu, Hawaii, November 22, 2022.



WILLIAM W.L. YUEN
Attorney for Petitioner
RCFC KALOKO HEIGHTS, LLC,
KALOKO HEIGHTS B1A HOLDINGS,
LLC, and KALOKO HEIGHTS
INVESTORS, LLC

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**MEMORANDUM IN SUPPORT OF
MOTION**

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

By Decision and Order filed on January 19, 1983, the State of Hawaii Land Use Commission ("**Commission**") reclassified approximately 213.473 acres of land, now identified as Hawai'i TMK (3) 7-3-09: 20, 32 and 57 through 62, at Kaloko and Kohanaiki, North Kona, Hawai'i, from the State Land Use Agricultural District to the State Land Use Urban District. This area is referred to as Phase I of the Kaloko Heights Project (the "**Project**"). The Commission also granted incremental redistricting of approximately 195.246 acres, now identified as Hawai'i TMK (3) 7-3-09: 19. This portion of the Project is referred to as Phase II.

Under the 1983 Decision and Order, Petitioner had until January 19, 1988, to submit an application for the reclassification of Phase II. In order to submit this application, Petitioner must have made substantial completion of the onsite and offsite improvements within Phase I and Phase II, including partial satisfaction of the conditions to provide affordable housing and dedicate land for public facilities, and full satisfaction of the conditions to construct a road connecting Queen Kaahumanu Highway and Mamalahoa Highway, and to complete water

source development. The Commission issued five amendments to the above-mentioned Decision and Order, extending the deadline for filing an application for the reclassification of Phase II until January 20, 2023. *See Order Granting Petitioner's Motion for Extension of Time to Apply for Redistricting of Phase II*, filed December 10, 2012 (the "**2012 Order**").

Petitioner RCFC KALOKO HEIGHTS, LLC, a Delaware limited liability company acquired the Project lands from Kaloko Heights Associates, LLC, a Delaware limited liability company, by Quitclaim Deed dated January 22, 2013. Kaloko Heights Associates, LLC had acquired the Project lands from Y-O Limited Partnership (“**Y-O**”) in 2004. RCFC KALOKO HEIGHTS, LLC in turn conveyed the Phase II land, Hawai`i TMK (3) 7-3-09: 19, to its affiliate KALOKO HEIGHTS INVESTORS, LLC, a Delaware limited liability company, on April 15, 2016. RCFC KALOKO HEIGHTS, LLC also conveyed Hawai`i TMK (3) 7-3-09: 59, to its affiliate KALOKO HEIGHTS B1A HOLDINGS, LLC, a Delaware limited liability company in December, 2017. RCFC KALOKO HEIGHTS, LLC, KALOKO HEIGHTS INVESTORS, LLC and KALOKO HEIGHTS B1A HOLDINGS, LLC are collectively referred to as “**Petitioner.**”

The land ownership is shown in the following table:

Phase	Owner	Hawai`i Tax Map Key Nos.
I	RCFC Kaloko Heights, LLC	7-3-09: 57, 58, 60, 61, 62, 70 and 71
I	Kaloko Heights B1A Holdings, LLC	7-3-09: 59
II	Kaloko Heights Investors, LLC	7-3-09: 19

Kaloko Heights Associates, LLC continued with development of the infrastructure for the Kaloko Heights Project shortly after acquiring the property in 2004. Kaloko Heights Associates, LLC partially constructed an offsite 1.0 million gallon water tank, water transmission lines, and

an electrical substation. Kaloko Heights Associates, LLC also began construction of a Loop Road which was intended to serve as the primary access for Phase I.

On September 15, 2008, Lehman Brothers filed for Chapter 11 bankruptcy protection. The bankruptcy of Lehman Brothers was one of the largest bankruptcy filings in U.S. history with Lehman holding over \$600 billion in assets. The global recession that began in September 2008 froze the capital markets and placed the real estate development business into a worldwide depression. The Lehman bankruptcy adversely affected Kaloko Heights Associates, LLC because a financial partner was a Lehman Brothers related entity. The result was a financial workout settled shortly after the Commission entered the 2012 Order. The result was Petitioner acquiring title to the Project under a purchase and sale agreement in 2013.

Petitioner has taken over development work on the Project, and continues to make significant progress. Petitioner humbly asks the Commission's approval of this request to extend by an additional ten (10) years the current deadline for the substantial completion of Phase I and the submission of an application for the redistricting of Phase II: Petitioner requests the new deadline to be January 20, 2033.

II. THE KALOKO HEIGHTS PROJECT

The original Petitioner, Y-O Limited Partnership, proposed to develop the Project with a total of 1,093 single-family residential units, 340 multi-family residential units, approximately 5.5 acres for commercial development and a 5 acre park. Under the Y-O plan, Phase I was proposed for 473 single-family residential units and 340 multi-family units: Phase II was proposed for 620 single-family residential units.

Petitioner's development plans for the Project are substantially similar to Y-O's, but Petitioner's development of the Project will be less dense than what was proposed by Y-O.

Following its acquisition of the Project in 2013, Petitioner completed a more detailed topographic survey that showed terrain exceeding a 20% slope in certain locations. Petitioner determined that the original master plan was not viable and retained Hart Howerton to revise the site plan for Phase I. Where Y-O had proposed 813 residential units in Phase I, Petitioner's revised site plan for Phase I includes 521 residential units (271 single-family units and 150 multi-family residential units), plus approximately 100 affordable rental units to be built by Hawai'i Island Community Development Corporation ("HICDC") as shown generally on the Illustrative Master Plan attached and incorporated by reference as **Exhibit A**. The County of Hawai'i Planning Department approved the revised Phase I site plan on September 8, 2017. Phase II is still proposed for 620 units.

Petitioner plans to develop approximately six acres of park and a community center. In addition, Petitioner will maintain approximately eight acres of land for archaeological preserve sites scattered throughout Phase I.

III. APPLICABLE LAND USE COMMISSION RULES

HAR § 15-15-70 provides that "Any party may make motions before, during, or after the close of a hearing." Petitioner brings this Motion for a modification to the 2012 Order to extend the time for substantial completion of Phase I and the submission of an application for the redistricting of Phase II.

Under the 1983 Decision and Order, 213.473 acres in Phase I were reclassified to the Urban District. Pursuant to HAR § 15-15-78, the 195.246 acres in Phase II were approved for incremental development. In other words, the Commission pre-approved the proposed reclassification of Phase II, but stated that the reclassification would be granted "upon receipt of an application by Petitioner for redistricting of this second phase upon a prima facie showing that

Petitioner has made substantial completion of the onsite and offsite improvements within Phase I. . . ."

Many of the Phase I improvements are complete, as detailed in Section IV *infra*, and Petitioner and its predecessors have expended substantial sums on infrastructure development and will continue to expend funds within Phase I. However, Petitioner will not be able to complete all remaining onsite improvements within Phase I by January 2023. Therefore, Petitioner seeks to modify the 2012 Order to allow for more time to substantially complete Phase I and submit its application for Phase II.

1. HAR § 15-15-94 - MODIFICATION OR DELETION OF CONDITIONS OR ORDERS

The Commission's rule regarding the modification of conditions of approval is set forth in HAR § 15-15-94, which provides as follows:

- (a) If a petitioner, pursuant to this subsection, desires to have a modification or deletion of a condition that was imposed by the commission, or imposed pursuant to section 15-15-90(e) or (f), or modification of the commission's order, the petitioner shall file a motion in accordance with section 15-15-70 and serve a copy to all parties to the boundary amendment proceeding in which the condition was imposed or in which the order was issued, and to any person that may have a property interest in the subject property as recorded in the county's real property tax records at the time that the motion is filed.
- (b) For good cause shown, the commission may act to modify or delete any of the conditions imposed or modify the commission's order.
- (c) Any modification or deletion of conditions or modifications to the commission's order shall follow the procedures set forth in subchapter 11.

Petitioner desires to modify the time period to substantially complete Phase I and to submit its application for the redistricting of Phase II. Concurrent with the filing of this Motion with the Commission, Petitioner will serve copies on the State Office of Planning and the County

of Hawaii Planning Department. In addition, Petitioner will serve copies on any person that may have a property interest in the subject property as recorded in the county's real property tax records. Petitioner believes that there is good cause for the Commission to modify its 2002 Order, as more fully described in Section IV.

IV. JUSTIFICATION FOR EXTENSION

Petitioner is completing the development of off-site infrastructure for Phase I.

1. Y-O's INFRASTRUCTURE DEVELOPMENT

Prior to Petitioner's acquiring title to the Project, Y-O completed the mauka-makai road (Hina Lani Street) through the property. Hina Lani Street is fully constructed and has been dedicated to the County. Hina Lani Street presently serves as one of the major mauka-makai collector roads connecting Mamalahoa Highway on the mauka/east end and Queen Kaahumanu Highway on the makai/west end.

Y-O installed water transmission lines in Hina Lani Street and installed street lights. The water transmission system and street lighting system were both dedicated to the County. An approximately 1.38 acre portion of the Phase II property was subdivided and dedicated to the County of Hawaii Department of Water Supply in 2001.

2. KALOKO HEIGHTS ASSOCIATES, LLC's INFRASTRUCTURE DEVELOPMENT

Kaloko Heights Associates, LLC acquired the property in 2004 and invested substantial sums in the Project until selling the Project to Petitioner. Kaloko Heights Associates, LLC obtained Final Subdivision Approval to create seven bulk lots within Phase I in February 2006. Grubbing Permits for approximately 200 acres within Phase I were obtained later that year. Kaloko Heights Associates, LLC received Final Plan Approval for a 219-unit multiple-family residential project within Area D-1 in 2007. Kaloko Heights Associates, LLC partially

completed a portion of the Loop Road, which was intended to serve as the primary access for Phase I.

Kaloko Heights Associates, LLC constructed a 10 MVA Substation, including transformer and switchgear, and installed underground 12 KV feeder cables and vacuum switch (all of which was energized by HELCO as of December 2006). Total cost of the substation and feeder improvements was approximately \$515,000.

3. KALOKO HEIGHTS ASSOCIATES, LLC AND PETITIONER SECURED WATER COMMITMENTS

Petitioner has a water commitment of 597,000 gallons at an average of 400 gallons per day, per unit. To date, Kaloko Heights Associates, LLC and Petitioner have paid \$9,090,990 to the County of Hawaii Department of Water Supply ("DWS") for water commitments and facility charges, and Petitioner is entitled to a facility charge credit to reflect a portion of Petitioner's and its predecessor's costs for drilling, casing and outfitting a production well. In addition Petitioner completed upgrades and improvements to an existing water tank and pump system located on the water tank site. On June 27, 2017, the Department of Water Supply approved the water tank and pump system for dedication and on August 8, 2017, the water tank system components and water tank were dedicated to the County Department of Water Supply. By letter dated July 13, 2020, the Department of Water Supply confirmed that Petitioner is entitled to 1,501 units of water. A copy of this letter is attached as **Exhibit B** and incorporated by reference.

4. ARCHAEOLOGICAL WORK

The State of Hawai'i Department of Land and Natural Resources Historic Preservation Division ("SHPD") approved an Archaeological Inventory Survey for Phase I in October 2005. A total of 89 archaeological sites were identified in the Phase I area. SHPD concurred with the

findings of the Inventory Survey that 26 sites were appropriate for data recovery, 11 historic sites, seven burial sites (one with a heiau) were appropriate for preservation, and that no further work was needed for the remaining 45 sites.

SHPD approved a Final Preservation Plan for the seven burial sites within Phase I in November 2006. Consistent with the requirements of the Final Preservation Plan, Petitioner recorded a Declaration of Archaeological Easements against portions of TMK Nos. (3) 7-3-09: 57, 58, 59 and 62 to protect the burial sites.¹

Kaloko Heights Associates LLC spent a considerable amount of time working with the community and kupuna groups to address concerns related to the maintenance and preservation of the Road to the Sea, also known as the Trail to Sea Coast and the Kohanaiki Trail ("**RTTS**"). The RTTS crosses portions of Phase I in a mauka to makai alignment. The RTTS does not run within Phase II.

The RTTS was likely used to traverse the land between the Kohanaiki Homesteads to the Kaloko Fishpond. The portions of the RTTS that are mauka of the Kaloko Heights Project are mostly destroyed due to bulldozing, paving, vegetation, pigs and contraband growers. However, within Phase I, portions of the RTTS are identifiable.

Initially, Kaloko Heights Associates, LLC sought approval to functionally realign the RTTS to be consistent with the pedestrian paths planned for the Kaloko Heights Project. However, in consultation with Na Ala Hele, it became clear that the Kona community was against realignment. Therefore, Kaloko Heights Associates, LLC revised its concept plan in order to preserve and incorporate the RTTS in place. Kaloko Heights Associates, LLC agreed that the RTTS would be at least 10 feet wide, and would be bordered by a 10 feet wide open

¹ Declaration of Archaeological Easements, recorded in the Bureau on August 13, 2007, as Document No. 2007-144836. The Declaration addressed sites 10701, 10771, 10722, 10728, 10740, 10754 and 10736.

space buffer on both sides, resulting in a 30 feet wide open space, perpetual public right of way running through Phase I.

To maintain this alignment, Kaloko Heights Associates, LLC sought, and was granted, the right to cross the RTTS by way of four perpetual, non-exclusive access and utility easements. The Board of Land and Natural Resources approved the easements in June 2007. Kaloko Heights Associates, LLC had the easement areas appraised in 2008, and paid \$3,260.00 to the State later in 2008. In recognition of the community's request to retain the RTTS alignment, Petitioner has incorporated the trail and buffer areas into its park/open space areas as part of its revised Master Plan. Petitioner has since filed a request with the Board of Land and Natural Resources to relocate three of these easements to accommodate Petitioner's revised site plan.

5. WASTEWATER IMPROVEMENTS

The last remaining constraint to the implementation of development of the site is to address the wastewater requirements for the Project. Y-O's original plan to use individual septic systems is no longer an acceptable solution. Since 2018, Petitioner has been coordinating plans for the installation and connection of wastewater transmission lines from the Project area, including the HICDC lands, to the County's wastewater treatment plant at Kealakehe ("WWTP"). Under this plan, wastewater from HICDC's affordable housing project and the development of the entire Kaloko Heights Project will be transmitted to the WWTP for treatment. The funding for the wastewater transmission line connection will be through a proposed community facilities district financing. The wastewater transmission line is the final component of offsite infrastructure improvements necessary for development of the Project.

On March 28, 2019, the Hawai`i County Council adopted Resolution No. 86-19, authorizing the construction of a wastewater transmission line from the Project lands to the WWTP. On July 7, 2021, the County Council adopted Resolution No. 158-21 which authorized the initiation of procedures to establish the Project as a community facilities district under Chapter 32 of the Hawai`i County Code as a method of financing the wastewater transmission line improvements.

On October 6, 2021, the County adopted Ordinance No. 21-67, which established the Project as a community facilities district known as “Hawai`i County Community Facilities District No. 1-2021.” It is intended that the wastewater transmission line improvements will be financed by bond proceeds. The bonds will be paid from a special tax to be levied upon the Project. No other properties are part of this district. As such, the HICDC affordable housing project will be served by the wastewater system and wastewater line improvements, but will not be required to finance its construction.

On April 7, 2022, the County adopted Ordinance No. 22-33, authorizing the issuance of special tax revenue bonds, for the purpose of financing the costs of constructing the wastewater transmission line improvements and related expenses, in sums not to exceed \$22,000,000.00.

On November 16, 2022, the County Council approved Resolution No. 618-22 approving the issuance of up to \$14,425,000 aggregate principal amount of Special Tax Revenue Bonds for the County’s Community Facilities District No.1-2021. This resolution is the final municipal approval needed to issue the Special Tax Revenue Bonds. Petitioner anticipates the bonds will be issued in December 2022, and Petitioner will commence construction of the wastewater transmission line shortly thereafter in accordance with the County’s funding requirements.

The County of Hawai`i has granted Petitioner preliminary subdivision approval for Increments A1 and B1 in Phase I, including approval of construction plans. Petitioner expects to complete development of the wastewater transmission line prior to commencing construction of the subdivision improvements.

6. PETITIONER'S COMPLIANCE WITH AND SATISFACTION OF LUC CONDITIONS

The conditions set forth in the Commission's 1983 Decision and Order were amended by the November 17, 1992, *Order Granting Motion for Second Extension of Time to Apply for Redistricting of Phase II and Amending Conditions of the Decision and Orders Dated January 20, 1983, June 13, 1990, and December 10, 2012*. Petitioner has satisfied, in whole or in part, the Commission's seven conditions, as amended, as more fully described below.

a. Condition 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 Housing Finance and Development Corporation (“HHFDC”) and the County of Hawaii, ten per cent (10%) of the lots and residential units 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 affordable housing 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. This affordable housing condition shall be implemented to the satisfaction of OHCD.

The original affordable housing condition provided for satisfaction of the requirement through for sale housing. On November 22, 2016, the Commission granted in part and denied in

part Petitioner's motion to amend the affordable housing condition to read as set forth above. Petitioner had filed the motion for a determination that either a for sale or a rental affordable housing project could satisfy the Commission's affordable housing condition. Based on this order, on May 11, 2017 Petitioner donated a 10.755 acre parcel in Phase I to HICDC, the leading provider of affordable rental housing on the Big Island, on the condition the site be developed for affordable rental housing. Petitioner also assigned HICDC 100 water commitments for the affordable rental project with the approval of the County of Hawaii Department of Water Supply. Construction of the wastewater transmission line is the last prerequisite for HICDC to commence construction of the affordable housing project. Upon the completion of the planned wastewater transmission line improvements, Petitioner will have provided HICDC developable land complete with access roads, water, electricity and wastewater facilities serving the site at no cost, in order to facilitate the development of a total of 99 affordable rental units and one manager's unit on the affordable housing project site. Petitioner believes that by making a significant contribution to construction of the HICDC project, Petitioner will be able to satisfy Petitioner's affordable housing requirement for up to 990 units for its Project.

Petitioner previously acquired four (4) Affordable Housing Credits from a housing developer that developed a project meeting a critical housing need in the County of Hawaii. Pursuant to an Affordable Housing Agreement (Credits), dated March 30, 2015 between Petitioner and the County of Hawai'i, the County recognized that Petitioner would be entitled to use the four housing credits to satisfy affordable housing requirements for a maximum of forty (40) residential units pursuant to the LUC Docket A81-525 and Change of Zone Ordinance 86-91 for its first increment of development.

b. Condition 2

Petitioner shall afford lot purchasers public access from the subject property to Queen Kaahumanu Highway and to Mamalahoa Highway by participating in the construction of a roadway connecting the two highways and running through the subject property, the location and standard of design and construction of such roadway to be approved and accepted by the County of Hawaii. The Petitioner shall be responsible for constructing such portions of the roadway within the subject property. The Petitioner's participation for the portions of the roadway outside the subject property may be by way of loans, loan guaranties, purchase of county obligations or otherwise.

Condition 2 has been satisfied. Hina Lani Street, which separates Phase I and Phase II, and extends from Queen Kaahumanu Highway to Mamalahoa Highway, was constructed and dedicated to the County. Hina Lani Street has long been open for public use. In addition, the street lighting system and water transmission lines within the Project have been completed and dedicated to the County. The channelized intersections at Mamalahoa Highway and Hina-Lani Street, and at Queen Kaahumanu Highway and Hina Lani Street, are complete and have been accepted for dedication. The \$9,000,000 bond that was put up to construct the aforementioned roadway improvements along Hina Lani Street was satisfied in full.

c. Condition 3

Petitioner shall dedicate to appropriate State and County agencies sufficient land for the provision of necessary public facilities.

This condition has been satisfied, and Petitioner will continue to comply with this condition. On July 29, 2001, Y-O, the prior owner of the Project, conveyed approximately 1.39 acres of land located within Phase II (currently TMK No. (3) 7-3-09:049) to the County Department of Water Supply to be used as a water reservoir site.

Petitioner also dedicated a recently completed 1.0 million gallon water reservoir, located at TMK: (3) 7-4-26:31, together with waterlines and related infrastructure carrying water from

the reservoir site to Hina Lani Street to the Department of Water Supply. Construction of this reservoir cost in excess of \$3,000,000. Petitioner intends to provide additional sites, including public park sites, for dedication to appropriate State and County agencies, and will dedicate the main Project roadways to the County.

d. Condition 4

Petitioner shall submit annual progress reports to the Commission, Office of State Planning and Hawaii County Planning Department as to its progress in satisfying these conditions.

Petitioner's most recent annual progress report is being submitted to the LUC concurrently with the filing of this motion. Copies of the annual report were provided to the State Office of Planning and the County of Hawaii Planning Department. Petitioner will continue to comply with this condition.

e. Condition 5

The conditions may be fully or partially released by the Commission as to all or any portion of the subject properties upon timely motion and provisions of adequate assurance of satisfaction of these conditions by the Petitioner.

Petitioner has not requested the release of any conditions.

f. Condition 6

Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

Petitioner will develop the property in substantial compliance with the representations made to the Commission, and as shown on the Illustrative Master Plan, a copy of which is enclosed herein as Exhibit A.

g. Condition 7

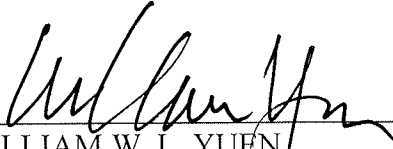
Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.

Petitioner will comply with this condition in the event that it voluntarily alters the ownership of the property prior to development of the Project.

V. SUMMARY AND CONCLUSION

Based on the foregoing, HAR §§ 15-15-70, 15-15-78, 15-15-94, testimony to be provided at the hearing on this Motion, and the records and files in this Docket, Petitioner RCFC KALOKO HEIGHTS, LLC, KALOKO HEIGHTS INVESTORS, LLC and KALOKO HEIGHTS B1A HOLDINGS, LLC, respectfully request that the Commission grant the Motion and allow for a 10-year extension of time to substantially complete Phase I and to apply for the redistricting of Phase II.

Dated: Honolulu, Hawaii, November 22, 2022.



WILLIAM W. L. YUEN
Attorney for Petitioner
RCFC KALOKO HEIGHTS, LLC,
KALOKO HEIGHTS B1A HOLDINGS,
LLC, and KALOKO HEIGHTS
INVESTORS, LLC

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DOCKET NO. A81-525

**DECLARATION OF WILLIAM W.L.
YUEN**

DECLARATION OF WILLIAM W.L. YUEN

I, WILLIAM W.L. YUEN, hereby declare:


1. I am a partner in the firm of Dentons US LLP, located at 1001 Bishop Street, Suite 1800, American Savings Tower, Honolulu, Hawaii, 96813, am duly admitted to practice law in the State of Hawaii and am one of the attorneys for Petitioner, RCFC KALOKO HEIGHTS, LLC, KALOKO HEIGHTS INVESTORS, LLC and KALOKO HEIGHTS B1A HOLDINGS, LLC ("**Petitioner**") in the above-referenced Docket.

2. I make this Declaration upon my personal knowledge and belief, and I am competent to testify to the matters set forth in the Memorandum described below.

3. On November 22, 2022, in Docket No. A81-525, Petitioner filed with the Commission Petitioner's Motion for Extension of Time to Apply for Redistricting of Phase II; Memorandum in Support of Motion; Exhibits A - B.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Honolulu, Hawaii, on November 22, 2022.



WILLIAM W.L. YUEN

EXHIBIT A



HART HOWERTON
NEW YORK • SAN FRANCISCO

KALOKO HEIGHTS
Kona, Hawaii

Exhibit 3

Overall Master Plan
4 | March 6th, 2019



EXHIBIT B

DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

345 KEKŪANAŌ'A STREET, SUITE 20 • HILO, HAWAII 96720
TELEPHONE (808) 961-8050 • FAX (808) 961-8657

July 13, 2020

Mr. Thomas L. H. Yeh
Law Offices of Yeh & Moore
85 West Lanikaula Street
Hilo, HI 96720

Dear Mr. Yeh:

**Subject: RCFC Kaloko Heights, LLC
Assignment of Water Units
Tax Map Key 7-3-009:019, 032, 057-062**

This is in response to your letter dated June 2, 2020.

This is to confirm that the total 1,501 units of water, from the Kona Source Agreement, are currently assigned to the parcels as follows:

Tax Map Key 7-3-009:019 (Lot 3A) (Phase 2)	680 water units
Tax Map Key 7-3-009:032 (Lot 1-A)	HICDC100 water units
Tax Map Key 7-3-009:070 (Lot 1-B)	5 water units
Tax Map Key 7-3-009:057 (Lot 2-A)	85 water units
Tax Map Key 7-3-009:058 (Lot 3-A)	265 water units
Tax Map Key 7-3-009:059 (Lot 4)	56 water units
Tax Map Key 7-3-009:060 (Lot 5)	30 water units
Tax Map Key 7-3-009:061 (Lot 6)	90 water units
Tax Map Key 7-3-009:062 (Lot 7)	190 water units
<u>Total</u>	<u>1,501 water units</u>

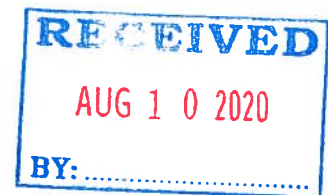
Should there be any questions, please contact Mr. Ryan Quitarano of our Water Resources and Planning Branch at 961-8070, extension 256.

Sincerely yours,

Keith K. Okamoto, P.E.
Manager-Chief Engineer

RQ:dfg

copy – RCFC Kaloko Heights, LLC
William L. Moore Planning, Inc.
Hawai'i Island Community Development Corporation



... Water, Our Most Precious Resource ... Ka Wai A Kāne ...

The Department of Water Supply is an Equal Opportunity provider and employer.

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DOCKET NO. A81-525

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly mailed via U.S. Mail, postage prepaid, or by hand delivery, or by electronic mail to the following:

<p>Lorene Maki, Planner Office of Planning State of Hawaii, Office of Planning 235 South Beretania Street, 6th Floor Honolulu, HI 96813 Email: lorene.k.maki@hawaii.gov</p>	<p>Zendo Kern, Director Planning Department County of Hawaii 101 Pauahi Street, Suite 3 Hilo, HI 96720 Email: planning@hawaiicounty.gov</p>
<p>Bryan C. Yee, Esq. Dept. of the Attorney General CED 425 Queen Street Honolulu, HI 96813 Email: bryan.c.yee@hawaii.gov</p>	<p>Elizabeth A. Strance Corporation Counsel Office of the Corporation Counsel County of Hawaii 101 Aupuni Street, Unit 325 Hilo, HI 96720 Email: corpcounsel@hawaiicounty.gov</p>
<p>Keith Kato, Executive Director Hawaii Island Community Development Corporation 100 Pauahi Street Suite 204 Hilo HI 96720 Email: Keith.hicdc@gmail.com</p>	<p>Nakamoto, Okamoto & Yamamoto 187 Kapiolani Street Hilo, HI 96720 Attn: Alan Okamoto Email: alan@noyhawaii.com</p>

Dated: Honolulu, Hawaii, November 22, 2022.



WILLIAM W. L. YUEN
Attorney for Petitioner
RCFC KALOKO HEIGHTS, LLC,
KALOKO HEIGHTS B1A HOLDINGS,
LLC, and KALOKO HEIGHTS
INVESTORS, LLC