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Land Court Document No. _____
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recorded on 1/26/2022 at 8:01 o'clock AM.
TITLE GUARANTY OF HAWAII, INCORPORATED

LAND COURT

REGULAR SYSTEM

Return by Mail () Pickup () To:

Office of Housing and Community Development
1990 Kino'ole St., Suite 102
Hilo, Hawai'i 96720

TG: Accom
TGE: Accom
DEBRA N. TOMONO

TITLE OF DOCUMENT:

AFFORDABLE HOUSING AGREEMENT

PARTIES TO DOCUMENT:

COUNTY: COUNTY OF HAWAI'I, a municipal corporation of the State of Hawai'i,
whose address is 1990 Kino'ole Street Suite 102, Hilo, Hawai'i 96720

DEVELOPER: Kona Three LLC, a Hawai'i limited liability company, whose address is
101 Hualālai Street, Hilo, Hawai'i 96720

Affects TMK (3) 7-6-021:016 and (3) 7-6-021:017

Document contains 14 pages.

AFFORDABLE HOUSING AGREEMENT

AKS/MP
JL/MP

This Affordable Housing Agreement (“Agreement”) is made and effective this 10th day of January, 2021 (the “Effective Date”), by and between **KONA THREE LLC**, a Hawai‘i limited liability company, (the “Developer”), whose place of business and mailing address in the State of Hawai‘i is 101 Hualālai Street, Hilo, Hawai‘i 96720, and the **COUNTY OF HAWAI‘I**, a municipal corporation of the State of Hawai‘i, (the “County”), whose principal place of business and mailing address is 25 Aupuni Street, Hilo, Hawai‘i 96720.

RECITALS

WHEREAS, the Developer proposes to develop 450 residential units on approximately 68.836 acres of real property located at Hōlualoa, North Kona, Island, County and State of Hawai‘i on Tax Map Key (TMK) Nos. (3) 7-6-021:016 and (3) 7-6-021:017, herein after called the “Kona Three Project” and more particularly described in Exhibit A attached hereto and made a part of; and

WHEREAS, the Developer proposes to satisfy the Kona Three Project affordable housing requirements, along with additional requirements for Gamlon Corp. (“Original Project Developer”) through the acquisition of affordable housing credits in accordance with Hawai‘i County Code (“HCC”) Section 11-5(a)(7); and

WHEREAS, on December 13, 1983, the State Land Use Commission (“LUC”) of the State of Hawai‘i amended the Agricultural Land Use District Boundary into the Urban Land Use District Boundary of approximately 173.66 acres of property, which included the Kona Three Project, subject to Condition “A”, which provided for the development of affordable housing as follows:

1. Petitioner shall provide housing opportunities for low and moderate income Hawai‘i residents prior to assigning or transferring (except by way of mortgage or assignment as security) its interest in the subject property, by offering for sale, on a preferential basis, on its own cooperation with either or both the Hawaii Housing Authority or the County of Hawai‘i, ten percent (10%) of the lots or houses and lots to be developed on the subject property, to residents of the State of Hawai‘i of low and moderate family income as determined by the Hawaii Housing Authority or County of Hawai‘i 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 (i.e., Act 105 or Hula Mae) or federally insured or assisted financing (i.e., FHA Section 245 Program) intended to encourage homeownership by low- and moderate-income families

WHEREAS, on May 15, 1984, Change of Zone Ordinance 84-23 became effective, amending the lands from Unplanned (U) to Single Family Residential (RS-15) and Multiple Family Residential (RM-5) for the then TMK Nos. (3) 7-6-021:004, (3) 7-6-021:009 through 013, and 7-6-021:015 through 017, subject to Condition “J”, which provides for the development of affordable housing as follows:

J. Housing opportunities for Hawaii residents shall be provided in accordance with the condition imposed by the State Land Use Commission. The number of units and manner in which they are to be provided shall meet with the approval of the Hawaii County Housing Agency[.]

WHEREAS, the Original Developer developed and sold two hundred and fifteen (215) units within the original project area of 173.66 acres, and provided no affordable housing units in this development phase; and

WHEREAS, the Developer proposes that the Kona Three Project will consist of four-hundred and fifty (450) residential units on approximately 68.836 acres; and

WHEREAS, Chapter 11, HCC, Section 11-5(a)(7) provides that the affordable housing requirements can be satisfied by obtaining excess credits from another developer pursuant to HCC Section 11-15; and

WHEREAS, the OHCD has confirmed its willingness to consent to such an assignment of excess housing credits for the Developer's intended purpose; and

WHEREAS, the Developer has confirmed its willingness to comply with the ten percent (10%) requirement imposed by the State Land Use Boundary Amendment and Rezoning Ordinance for the entire property consisting of approximately 173.66 acres, satisfying the C requirements for a combined total of 665 residential units; and

WHEREAS, Chapter 11, Article 1 of the Hawai'i County Code, relating to Affordable Housing Policy, authorizes the Mayor, the County of Hawai'i Office of Housing and Community Development ("OHCD") or their duly authorized representative, to enter into this Agreement with the Developer to perform one or any combination of the options for satisfaction of the affordable housing requirements contained in Hawai'i County Code Section 11-5; and

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, and pursuant to Chapter 11, Article 1 (Affordable Housing) of the Hawai'i County Code ("Chapter 11"), the parties hereby agree as follows:

1. The Developer shall provide proof and OHCD shall verify excess credits are valid. Upon the closing of the Developer's purchase of the 67 excess housing credits which are verified by OHCD, the Developer will be entitled to use said housing credits to satisfy the affordable housing requirements for the entire project including, Gamlon Corp's Original Development Project of 215 units and the Kona Three Project consisting of a maximum of 450 residential units/lots, pursuant to the following: HCC, Chapter 11, Article 1 (Affordable Housing Policy).

2. Upon the closing of the Developer's purchase of the 67 excess housing credits, a full Release of this Agreement and any other appropriate documentation reasonably required by the parties related to the satisfaction of the affordable housing requirements for this 450 residential unit Kona Three Project shall be executed by the parties hereto and recorded by the Developer with the Bureau of Conveyances, or with the Land Court of the State of Hawaii, as applicable, with Developer paying all costs of recordation.
3. In the event the Developer builds more than 450 residential units, Developer shall obtain the required credits to satisfy the affordable housing requirement for the additional units.
4. This Agreement supersedes all other agreement and understandings (whether oral or written) made heretofore or contemporaneously herewith by the parties on the subject matter hereof. The provisions of this Agreement may not be modified, altered, or changed except by another written instrument executed by the parties hereto.
2. This Agreement shall run with the land and shall 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 title to the Affordable Housing Site by the Developer at the Bureau of Conveyances or with the Land Court of the State of Hawai'i as applicable, within thirty (30) days after being fully executed by the parties. The parties agree to take such actions and execute whatever other documents as are reasonably necessary to effectuate and carry out the intent of this Agreement. As provided in Paragraph 2, above, upon Developer's purchase of the 67 excess housing credits, the parties shall execute and record a full Release of this Agreement along with any other appropriate documentation.
3. Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

To the County:

Housing Administrator
Office of Housing and Community Development
1990 Kino'ole Street, Suite 102
Hilo, Hawai'i 96720

To the Developer:

Kona Three LLC
101 Hualālai Street
Hilo, Hawai'i 96720

ATTN: Roland Higashi

The OHCD and the Developer may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

4. The Developer agrees, if applicable, that it will take all actions necessary to effect amendment of this Agreement as may be necessary to comply with amendments to HCC Chapter 11, and all applicable rules, regulations, policies, procedures, rulings, or other official statements pertaining to Chapter 11.
5. This instrument may be executed in two 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.
6. 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.
7. This agreement shall be recorded with the State of Hawaii Bureau of Conveyances, and a true and correct copy shall be provided to the County of Hawaii Office of Housing & Community Development within 30 days.
8. This Agreement shall be governed and construed in accordance with the laws of the Third Circuit Court of the State of Hawai'i.

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

SIGNATURE PAGE FOLLOWS

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IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first written above.

DEVELOPER:

Kona Three LLC,
a Hawai'i limited liability company

By: Robert G. Williams
Name: Robert G. Williams
Title: Treasurer of Kona Three LLC and
Manager of OIP, LLC, a Hawai'i limited
liability company and member of Kona Three LLC

Date:

COUNTY:

COUNTY OF HAWAI'I,
a municipal corporation of the State of Hawai'i

By: Lee E. Lord
Name: LEE E. LORD
Title: Managing Director

Date: 1/10/22

RECOMMEND APPROVAL:

Susan K. Kunz
Susan K. Kunz
Housing Administrator

Date: 12/27/21

**APPROVED AS TO FORM
AND LEGALITY:**

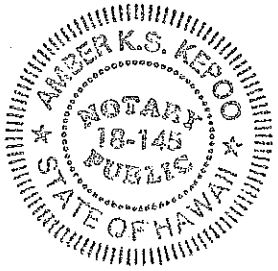
Michael Kelle
Deputy Corporation Counsel

Date: 01/07/22

STATE OF HAWAI'I)
)
COUNTY OF HAWAI'I) SS.

On this 10th day of January, 2022, before me personally appeared LEE E. LORD, to me personally known, who, being by me duly sworn, did say that he is the Managing Director of the County of Hawai'i, a municipal corporation of the State of Hawai'i, that the foregoing instrument was signed on behalf of the County of Hawai'i by authority given to said Mayor of the County of Hawai'i by Sections 5-1.3 and 13-13 of the County Charter, County of Hawai'i (2018), as amended, and assigned by the Mayor to the Managing Director pursuant to Section 6-1.3(h) of the County Charter; and said LEE E. LORD acknowledged said instrument to be the free act and deed of said County of Hawai'i.

Amber K.S. Kepono
Signature

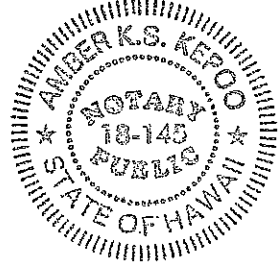


AMBER K.S. KEPOO
Print or Type Name

Notary Public, State of Hawai'i

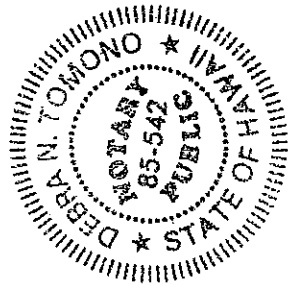
My Commission Expires: 04/01/22

NOTARY CERTIFICATION	
Doc. Date: <u>01/10/22</u>	No. of Pages: <u>7</u>
Notary Name: <u>AMBER K.S. KEPOO</u> <u>Affordable Housing</u>	Third Circuit
Doc. Description: <u>Agreement</u>	
<u>Amber K.S. Kepono</u> <u>01/10/22</u>	
Notary Signature	Date



STATE OF HAWAI'I)
) SS.
COUNTY OF HAWAI'I)

On 12/21/2021, before me appeared Robert G Williams to me personally known, who, being by me duly sworn, did say that he is the Treasurer of KONA THREE LLC; that the instrument was signed on behalf of KONA THREE LLC by authority of its member(s); and acknowledged said instrument to be the free act and deed of said company.



Debra N. Tomono

Debra N. Tomono

Print Name

Notary Public, State of Hawai'i

My commission expires: EXPIRATION: October 17, 2022

NOTARY CERTIFICATION	
Doc. Date: <u>undated</u>	No. of Pages: <u>14</u>
Notary Name: <u>Debra N. Tomono</u>	
Doc. Description: <u>AFFORDABLE HOUSING AGREEMENT, TMKs (3) 7-6-021:016 and (3) 7-6-021:017</u>	Circuit: <u>3rd</u>
<u>Debra N. Tomono</u>	<u>12/21/2021</u>
Notary Signature	Date

EXPIRATION: October 17, 2022

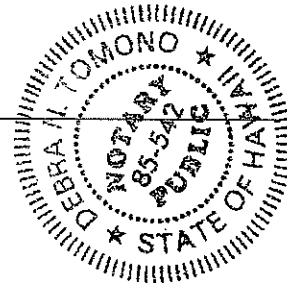


EXHIBIT A
[Property Description]

EXHIBIT "A"

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 4475, Land Commission Award Number 7713, Apana 43 to Victoria Kamamalu and a portion of Royal Patent 8217, Land Commission Award 3360 to John P Muna) situate, lying and being at Holuioa 1 and 2, District of North Kona, Island and County of Hawaii, State of Hawaii, being LOT 2, and thus bounded and described:

Beginning at the southwest corner of this parcel of land, being also the northwest corner of Lot 15 (Stream) and along the northeasterly side of Hawaii Belt Road, F.A.P. Route 11 Project No. 11A-03-69, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAILUA", being 9,837.83 feet south and 9,057.80 feet east, thence running by azimuths measured clockwise from true South:

- | | | | |
|-----|--------------|----------|---|
| 1. | 152° 22' 30" | 95.69 | feet along Hawaii Belt Road, F.A.P. Route 11 Project No. 11A-03-69; |
| 2. | 139° 59' 30" | 20.75 | feet along same; |
| 3. | 99° 48' 30" | 35.07 | feet along same; |
| 4. | 154° 11' | 597.05 | feet along same; |
| 5. | 240° 28' 30" | 2,903.35 | feet along the remainder of Royal Patent 4475, Land Commission Award 7713, Apana 43 to Victoria Kamamalu; |
| 6. | 255° 18' | 17.97 | feet along same; |
| 7. | 311° 55' | 219.92 | feet along the remainder of Royal Patent 4475, Land Commission Award 7713, Apana 43 to Victoria Kamamalu (Lot 2-A); |
| 8. | 331° 14' 15" | 143.36 | feet along same; |
| | | | Thence along Lot 14 (Stream) for the next thirteen (13) courses, the direct azimuth and distances being: |
| 9. | 96° 54' | 67.99 | feet; |
| 10. | 112° 56' | 86.79 | feet; |
| 11. | 90° 53' | 56.48 | feet; |
| 12. | 69° 49' | 76.70 | feet; |
| 13. | 46° 39' | 114.37 | feet; |

14.	51° 06'	83.31	feet;
15.	76° 01'	139.84	feet;
16.	51° 29'	175.76	feet;
17.	66° 32'	91.49	feet;
18.	44° 49'	170.06	feet;
19.	25° 59'	247.57	feet;
20.	37° 21'	124.60	feet;
21.	31° 20' 30"	825.56	feet;

Thence along Lot 15 (Stream) for the next ten (10) courses,
the direct azimuth and distances being:

22.	37° 01'	57.76	feet;
23.	66° 24'	138.13	feet;
24.	44° 01'	114.46	feet;
25.	67° 01'	134.84	feet;
26.	102° 13'	107.13	feet;
27.	69° 30'	139.97	feet;
28.	31° 40'	114.38	feet;
29.	88° 52'	64.98	feet;
30.	114° 04'	60.22	feet;
31.	77° 28'	132.01	feet to the point of beginning and containing an area of 37.936 acres, more or less.

TOGETHER WITH Easements "C", "D", "E" and "F" for roadway and utility purposes, as described in QUITCLAIM DEED dated September 4, 1987, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 21336 Page 36; and SUBJECT TO the terms and provisions contained therein.

LOT 1-A

Land situated approximately 100 feet Westerly of 'Io Place at Hoiuloa 1st and 2nd, North Kona, Island and County of Hawaii, State of Hawaii.

Being portions of:

Lot 1;

Royal Patent 8217, Land Commission Award 3660 to John P. Munn; and

Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Kamamalu.

Beginning at an angle on the Easterly boundary of this parcel of land, being also the Northwesterly corner of Lot 18-G-1 of this subdivision and a point on the Westerly boundary of Lot 1-A-1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAILUA (NORTH MERIDIAN)" being 9,233.63 feet South and 11,607.67 feet East and running by azimuths measured clockwise from True South:

- | | | | |
|----|-------------|--------|---|
| 1. | 39° 41' 16" | 271.61 | feet along Lot 18-G-1 of this subdivision and along the remainder of Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Kamamalu to a point; |
|----|-------------|--------|---|

Thence, for the next ten (10) courses following along Lot 22 (Stream) (County of Hawaii) (Hoiuloa Drainageway) and along the remainder of Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Kamamalu:

- | | | | |
|----|---------|--------|------------------|
| 2. | 95° 15' | 205.20 | feet to a point; |
| 3. | 96° 50' | 273.37 | feet to a point; |

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LOT 1-A

- | | | |
|-----|----------|-------------------------|
| 4. | 74° 55' | 132.84 feet to a point; |
| 5. | 107° 39' | 54.73 feet to a point; |
| 6. | 90° 53' | 191.87 feet to a point; |
| 7. | 129° 17' | 98.53 feet to a point; |
| 8. | 80° 07' | 71.22 feet to a point; |
| 9. | 53° 38' | 104.75 feet to a point; |
| 10. | 83° 27' | 205.32 feet to a point; |
| 11. | 84° 08' | 104.72 feet to a point; |

Thence, for the next three(3) courses following along Lot 14 (Stream) (County of Hawaii) (Horseshoe Bend Drainageway):

- | | | |
|-----|--------------|--|
| 12. | 211° 20' 30" | 783.45 feet along the remainder of Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Kamamalu to a point; |
| 13. | 217° 21' | 127.42 feet along the remainders of Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Kamamalu and Royal Patent 8217, Land Commission Award 3660 to John P. Munn to a point; |
| 14. | 205° 59' | 243.59 feet along the remainders of Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Kamamalu and Royal Patent 8217, Land Commission Award 3660 to John P. Munn to a point; |

Thence, for the next ten (10) courses following along Lot 14 (Stream) (County of Hawaii) (Horseshoe Bend Drainageway) and along the remainder of Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Kamamalu :

- | | | |
|-----|----------|-------------------------|
| 15. | 224° 49' | 148.60 feet to a point; |
| 16. | 246° 32' | 87.91 feet to a point; |
| 17. | 231° 28' | 170.64 feet to a point; |
| 18. | 256° 01' | 140.06 feet to a point; |
| 19. | 231° 08' | 98.89 feet to a point; |
| 20. | 226° 39' | 104.41 feet to a point; |

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LOT 1-A

21.	249° 49'	53.22	feet to a point;
22.	270° 55'	33.64	feet to a point;
23.	292° 56'	83.57	feet to a point;
24.	276° 54'	90.29	feet to a point;
25.	354° 02'	55.41	feet along Lot 2-A and along the remainder of Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Kamamalu to a point;
26.	21° 41' 50"	8.60	feet along Lot 2-C and along the remainder of Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Kamamalu to a point;
27.	389° 37' 20"	20.09	feet along Lot 2-C and along the remainder of Royal Patent 8217, Land Commission Award 3660 to John P. Munn to a point;
28.	5° 07' 20"	44.89	feet along Lot 2-C and along the remainder of Royal Patent 8217, Land Commission Award 3660 to John P. Munn to a point;
29.	355° 00'	65.72	feet along Lot 12 and along the remainder of Royal Patent 8217, Land Commission Award 3660 to John P. Munn to a point;

Thence, for the next five (5) courses following along the remainder of Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Kamamalu:

30.	3° 05'	265.06	feet along Lot 11 and Lot 10 to a point;
31.	77° 08'	20.55	feet along Lot 10 to a point;
32.	4° 39'	203.73	feet along Lot 10 and Lot 9 to a point;
33.	347° 02'	187.60	feet along Lot 1-A-3 to a point;
34.	337° 00'	317.65	feet along Lot 1-A-3, Lot 1-A-2 and Lot 1-A-1 to the point of beginning and containing an area of 29.762 Acres.

SUBJECT, HOWEVER, to Zone X (areas determined to be outside the 0.2% annual chance floodplain), Zone XS (X Shaded) (areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square

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WES THOMAS ASSOCIATES
 - Land Surveyors -
 75-5749 Kalawa Street, Kailua-Kona, Hawaii 96740-1817

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mile; and areas protected by levees from 1% annual chance flood), Zone AE (special flood hazard areas subject to inundation by the 1% annual chance flood, BFE determined), Zone AEF (special flood hazard areas subject to inundation by the 1% annual chance flood, floodway areas in ZONE AE. The floodway is the channel of stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without increasing the BFE), as per Flood Insurance Rate Map (F.I.R.M.) Community-Panel Number 155166 0952 F, revised September 29, 2017.

TOGETHER WITH, Easement "AU-2" for Access and Utility Purposes over and across Lot 16-G-1 of this subdivision and being more particularly described by the attached description.

ALSO TOGETHER WITH, existing Easements "C", "C-1", "D" and "D-1" for Road and Utility Purposes as previously recorded at the Bureau of Conveyances in Honolulu, Hawaii in Liber 21336 Page 36.

ALSO TOGETHER WITH, existing Easement "F" for Road and Utility Purposes as previously recorded at the Bureau of Conveyances in Honolulu, Hawaii in Liber 21336 Page 36 and Document Number 2004-086915.