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STATE OF HAWAII
BUREAU OF CONVEYANCES
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/s/ NICKI ANN THOMPSON
REGISTRAR

LAND COURT

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RS 2 #15017501

Gary C. Zamber
Law Office of Gary Zamber
21 Waianuenue Avenue, #3
Hilo, Hawai'i 96720
4-5050281

(Handwritten initials and notes)
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TITLE OF DOCUMENT:

AFFORDABLE HOUSING AGREEMENT

DEVELOPER: WEST VIEW DEVELOPMENTS LLC, a Hawai'i limited liability company, whose principal place of business and mailing address is: 13-694 Hinalo St., Pahoa, Hawaii 96778

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) 7-4-004:014, 091 & 092

(This document consists of 7 pages.)

AFFORDABLE HOUSING AGREEMENT

This Agreement is made and effective this 13th day of November, 2015 by and between WEST VIEW DEVELOPMENTS, LLC, a Hawaii limited liability company, hereinafter referred to as “Developer”, whose principal place of business and mailing address is 13-694 Hinalo St., Pahoa, Hawaii 96778, 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.

WHEREAS, the Developer proposes to develop “Hillwood Park Estates” consisting of 13.150 acres of developable land identified as TMKs: (3) 7-4-004:014, 091 & 092 (the “Affordable Housing Site”) with 114 finished dwelling units (the “Project”) in two phases; and

WHEREAS, sufficient water commitments for the development of the Project are available pursuant to an agreement with the Water Board of the County of Hawaii dated August 9, 2006, a true copy of which is attached hereto as Exhibit A; and

WHEREAS, the parties hereto have evaluated the various options available for development of the Affordable Housing Site to satisfy the affordable housing goals and policies of the State of Hawaii and County of Hawai‘i; and

WHEREAS, Chapter 11, Article 1 of the Hawaii County Code, together with Chapter 2, Section 2-73, of the Hawaii County Code authorizes the Mayor of the County of Hawaii to enter into this Agreement with the Developer.

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

1. Within five (5) years of the date of this Agreement, the Developer shall complete construction of phase 1 of the Project with not less than 52 dwelling units.
2. The rental prices on the dwelling units shall be controlled for no less than 20 years after the initial occupancy and Developer agrees to abide by applicable rental restrictions.
3. The affordable housing dwelling units shall be rented to households who qualify under the applicable County of Hawaii affordable housing eligibility requirements and income qualifications earning less than 60% of the area median income.
4. In consideration of the covenants set forth in this Agreement, Developer shall earn two (2) affordable housing credits for each dwelling unit constructed and rented as aforesaid.
5. The Project addresses a critical need for affordable housing in the County of Hawaii and, as a necessary inducement for the construction of the Project, immediately upon recordation of this Agreement in the Bureau of Conveyances,

the Developer is hereby granted (104) affordable housing credits, (9) of which will be used to satisfy the on-site affordable housing requirement for phase 1, (95) of which will be excess affordable housing credits, forty-six (46) of which will be assigned to third parties upon recordation of this Agreement as consideration for the value of the land conveyed to Developer constituting the Affordable Housing Site, and the assignee of said forty-six (46) credits may further assign such credits.

6. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or un-enforceability shall not invalidate the remainder of this Agreement.
7. If the efforts of the Developer to complete the design, development and construction of the affordable rental units 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 of Hawaii, shipping strike in the State of Hawaii or on the continental United States, or (b) the failure of any Government Agencies to approve or consent to any matter for which such approval or consent is required within a reasonable time after the Developer has made a request therefor despite reasonable efforts on the part of the 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 shall be extended by the number of days that the Developer is delayed as a result of the specified event of Force Majeure.
8. This Agreement shall run with the land 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 by the Developer at the Bureau of Conveyances or with the Land Court of the State of Hawaii as applicable, within thirty 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.
9. Upon the determination of compliance with the terms of this Agreement for all of the Affordable Housing Site by the OHCD, a Release or a Partial Release of this Agreement, as applicable, shall be executed by the parties hereto and filed by the 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.

10. Upon the written request of the Developer, the County may agree to subordinate its rights hereunder to the encumbrance of any mortgages and security agreements to any bank or lender for the site for the purpose of completing construction of the affordable housing rental 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.
11. 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.

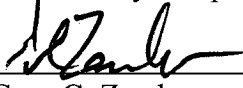
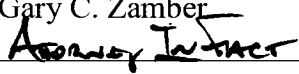
- e. Developer who subcontracts any portion of the contract shall assure the County that such subcontractor shall abide by the nondiscrimination provisions stated herein and agrees that any subcontractor who is found in violation of such provisions shall subject the principal contractor's contract with 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.
12. 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.
 13. 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.
 14. This Agreement shall be governed and construed in accordance with the laws of the State of Hawai'i.

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

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


“DEVELOPER”:

WEST VIEW DEVELOPMENTS LLC
A limited liability company

By: 
Gary C. Zamber


Date: 10/14/2015


RECOMMEND APPROVAL:


Susan K. Akiyama
Housing Administrator

Date: 10/21/15

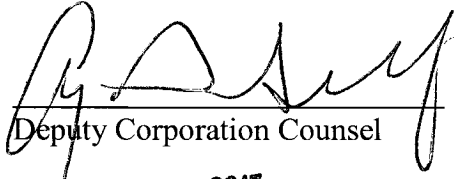
“COUNTY”:

COUNTY OF HAWAII

By: 
Name: **WILLIAM P. KENOI**
Title: **MAYOR**

Date: NOV 13 2015

**APPROVED AS TO FORM
AND LEGALITY:**

By: 
Deputy Corporation Counsel

Date: NOV 12 2015

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 16 day of October, 2015, before me, personally appeared Gary C. Zamber, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the foregoing instrument, and, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Joyce Yoshimura
NOTARY PUBLIC, State of Hawaii

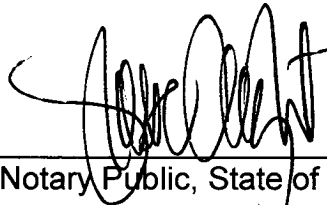
JOYCE YOSHIMURA
Printed name of Notary
My commission expires on:
10/16/2015 LS

Doc Date: left blank # Pages: 7
at time of notary
Notary Name: _____ 3rd Circuit
Doc. Description: Affordable Housing
Agreement
JOYCE YOSHIMURA 10/16/2015
Notary Signature Date

LS

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

On this 13th day of November, 2015 before me personally appeared WILLIAM P. KENOI, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Hawai'i, a municipal corporation of the State of Hawai'i; that the seal affixed to the foregoing instrument is the corporate seal of said County of Hawai'i; that the foregoing instrument was signed and sealed in behalf of the County of Hawaii by authority given to said Mayor of the County of Hawai'i by Section 5-1.3 and 13-13 of the County Charter, County of Hawai'i (2010), as amended; and said WILLIAM P. KENOI acknowledged said instrument to be the free act and deed of said County of Hawai'i.



L.S.

Notary Public, State of Hawai'i, 3rd Jud. Cir.

Printed Name: Paulette Cainglit

My Commission Expires: 12/16/2017

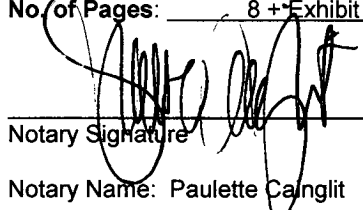
NOTARY CERTIFICATION

Document Description: Affordable Housing Agreement

(West View Developments, LLC / County of Hawaii)
(TMK Nos: (3) 7-4-004:014, 091 & 092)
(Hillwood Park Estates)

Doc. Date: November 13, 2015 undated at time of notarization.

No. of Pages: 8 + Exhibit Circuit: Third



Notary Signature _____ Date November 13, 2015

Notary Name: Paulette Cainglit

L.S.