

AGREEMENT

THIS AGREEMENT, effective this 16th day of September 2008, by and between LANIHAU PROPERTIES, LLC, a Hawai'i limited liability company, whose mailing address is 3465 Waialae Avenue, Suite 260, Honolulu, Hawai'i 96816, and WEST HAWAII BUSINESS PARK, LLC, whose mailing address is 3465 Waialae Avenue, Suite 260, Honolulu, Hawai'i 96816 (hereinafter together referred to as "LANIHAU"), and the COUNTY OF HAWAII, whose mailing address is 25 Aupuni Street, Hilo, Hawai'i 96720 (hereinafter referred to as the "County"), by and through its Mayor.

WITNESSETH

WHEREAS, LANIHAU is comprised of entities, consisting of persons who are the descendants of Francis R. Greenwell or who represent the Greenwell family interests within Honokohau, District of North Kona, County and State of Hawai'i; and

WHEREAS, on September 26, 2003, the State Land Use Commission ("LUC") issued Findings of Fact, Conclusions of Law and Decision and Order relating to Docket No, A00-730, approving the reclassification of approximately 336.984 acres of land ("subject property") from the Conservation District to the Urban District for the subject property situate at Honokohau, District of North Kona, Hawai'i, which was further identified at that time as Tax Map Key: (3) 7-4-008: 013 and 030; and

WHEREAS, the LUC reclassification included Condition No. 8 entitled Affordable Housing, which required the Petitioner to submit a housing needs assessment and

Implementation plan to the LUC and the Hawai'i County Housing Agency ("HCHA") for review and approval and compliance with the County of Hawai'i affordable housing policy; and

WHEREAS, Change of Zone Ordinance No. 04-110, effective on October 12, 2004, rezoned a total of 282.367 acres of the 336.984 acres in the Urban District, which included 196.634 acres of the subject property from the Open District ("O") to the Industrial-Commercial Mixed District ("MCX-20") and an additional 85.733 acres to the General Industrial District ("MG-1a") designated as TMK: (3) 7-4-8: por. 13 and 30 , all of which rezoned areas are hereinafter referred to as the "West Hawai'i Business Park"; and

WHEREAS, Change of Zone Ordinance No. 04-110 included Condition S, which stipulates that the applicant shall comply with the requirements of Chapter 11, Article 1, Hawai'i County Code, relating to the County of Hawaii affordable housing policy; and

WHEREAS, Section 11-4(d) of the County's affordable housing policy provides the affordable housing requirements for industrial uses and stipulates the affordable housing requirements for industrial uses that must fulfill the affordable housing requirements are any uses allowed as of right in an ML or MG district, except for home improvement centers, and any uses that are also allowed as of right in a CG district; and

WHEREAS, a "Housing Needs Assessment and Implementation Plan" was submitted on behalf of LANIHAU to the HCHA through the Office of Housing and Community Development ("OHCD") on October 11, 2006, to address the requirements of Condition No. 8 of the LUC's Findings of Fact, Conclusions of Law and Decision and Order issued on September 26, 2003, relating to LUC Docket No. A00-730 and the provisions of Condition S of Ordinance 04-110 effective as of September 12, 2004; and

WHEREAS, LANIHAU and the Greenwell family have cooperated with the County of Hawai'i in providing land for essential public improvements benefiting the North Kona community; and

WHEREAS, LANIHAU has provided community benefits by participating in the development of the Hualalai Elderly Housing Projects (Phases I, II and III), which are providing a total of 96 very low income elderly rental units in the North Kona community; and

WHEREAS, HCHA adopted Resolution No. 134, Draft 2, on December 2, 2003, which acknowledged the interest and goodwill of LANIHAU toward the initial development of the Hualalai Elderly Rental Housing Project, Phases I and II comprising a total of 66 very low income rental units, and awarded 132 affordable housing credits to LANIHAU; and

WHEREAS, HCHA Resolution No. 134, Draft 2, further stated that these affordable housing credits are transferable within properties owned by LANIHAU and/or its affiliated entities to satisfy future affordable housing condition pursuant to Chapter 11, Article 1, sections 11-4 and 11-5 of the Hawai'i County Code; and

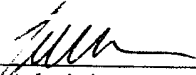
WHEREAS, OHCD recommended approval of the Housing Needs Assessment and Implementation Plan submitted for the West Hawai'i Business Park on October 11, 2006 and HCHA granted such approval on October 30, 2006, by adopting Resolution No. 143; which Resolution anticipated that LANIHAU would enter into this agreement with the COUNTY (through OHCD) to apply 32 affordable housing credits earned through LANIHAU'S participation in the development of phases I and II of the Hualalai Elderly Housing Project as it relates to West Hawai'i Business Park.

NOW THEREFORE, the parties hereby agree as follows:

1. Pursuant to the Housing Needs Assessment and Implementation Plan, and in satisfaction of Condition S of Change of Zone Ordinance No. 04-110, LANIHAU may proceed with the implementation provisions that are contained within such Housing Needs Assessment and Implementation Plan, as attached hereto as Exhibit "A"; and
2. Pursuant to such implementation provisions, Resolution No. 143 and with OHCD's concurrence, LANIHAU hereby applies 32 affordable housing credits, previously earned through its participation in the in the development of Phases I and II of the Hualalai Elderly Housing Project, in full satisfaction of the affordable housing requirement imposed under Chapter 11, Hawai'i County Code, as amended, as it may be related to (i) LANIHAU or its successors or assigns, as the landowner/developer of the West Hawai'i Business Park (the description of which is contained in Ordinance No. 04-110 and the location which is depicted on Exhibit "A" to said Ordinance) and (ii) the subsequent purchasers of the individual lots within the project.

IN WITNESS THEREOF, the parties hereto have caused these present to be executed the
day and year first above written.

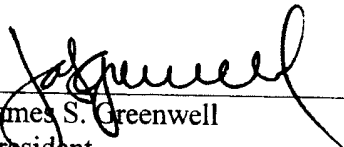
RECOMMEND APPROVAL:



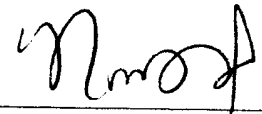
Housing Administrator
Office of Housing and
Community Development

Date: 09/10/00

LANIHOU PROPERTIES, LLC,
a Hawai'i limited liability company.

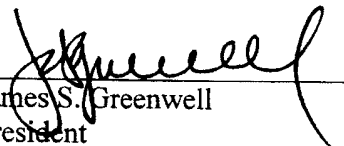
By: 

James S. Greenwell
President

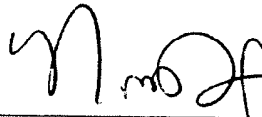
By: 

Norman S. Hom
Vice President

WEST HAWAII BUSINESS PARK LLC,
a Hawai'i limited liability company.


By: 

James S. Greenwell
President

By: 

Norman S. Hom
Vice President

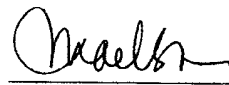
APPROVED AS TO FORM
AND LEGALITY:



Deputy Corporation Counsel
County of Hawai'i

Date: 9/12/03

COUNTY OF HAWAII

By: 

Harry Kim
Its Mayor

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On September 16, 2008, before me personally appeared DIXIE KAETSU, to me personally known, who, being by me duly sworn, did say that DIXIE KAETSU is the Acting 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 Hawai'i by authority given to said Acting Mayor of the County of Hawai'i by Section 5-1.5 of the County Charter, County of Hawai'i (2000), as amended, and said DIXIE KAETSU acknowledged said instrument to be the free act and deed of said County of Hawai'i.



Virginia M. Tolentino
VIRGINIA M. TOLENTINO
Notary Public, State of Hawai'i

My Commission Expires: 4/22/09

Doc. Date: <u>SEP 16 2008</u>	# Pages: <u>5</u>
Notary Name: Virginia M. Tolentino	Third Circuit
Doc. Description: <u>Agreement for Application - Affordable Housing Credits. West Hawaii Business Park.</u>	
<i>Virginia M. Tolentino</i> Notary Signature	<u>SEP 16 2008</u> Date