

**AGREEMENT  
(CONNECTOR ROAD - PHASE 3 ROADWAY IMPROVEMENTS)**

LUALA'I AT PARKER RANCH PHASE 3 (SUB NO. 2004-<sup>0221</sup>~~0021~~);  
LUALA'I AT PARKER RANCH PHASE 4 (SUB NO. 2006-000279)

THIS AGREEMENT, made, executed, and delivered this 19<sup>th</sup> day of April, 2007, by and between **JOHN B. RAY, WARREN H. HARUKI, AND TIMOTHY E. JOHNS**, the duly appointed, qualified and acting **TRUSTEES UNDER that CERTAIN UNRECORDED LAND TRUST AGREEMENT for the PARKER LAND TRUST dated SEPTEMBER 13, 2002, as AMENDED**, acting in their fiduciary and not in their individual capacities, whose principal place of business and mailing address is 67-1435 Mamalahoa Highway, Kamuela, Hawaii 96743, hereinafter called the "Subdivider", and the **COUNTY OF HAWAII**, whose principal place of business and mailing address is 25 Aupuni Street, Hilo, Hawaii 96720, hereinafter called the "County", through its applicable agencies, departments, boards, commissions, officers and employees,

WITNESSETH:

WHEREAS, pursuant to Condition M(1)(b) of Zoning Ordinance No. 02-25, the Subdivider may, "[i]n lieu of actual construction of the connector road, enter into an agreement with the Planning Director and the Chief Engineer to assure the County that the applicable portion(s) of the connector road will be constructed by way of a surety bond, certified check or other security deemed acceptable to the Corporation Counsel and the Planning Director"; and

WHEREAS, the Subdivider has undertaken to complete the construction of the Connector Road - Phase 3 Roadway Improvements, which will consist of approximately two thousand eight hundred lineal feet (2,800 L.F), including roadways, grading, drainage, water and utilities from the Kaomoloa Road Extension, west to Mamalahoa Highway as depicted in **Exhibit A** attached hereto and incorporated herein by reference, to include interim improvements of the Connector Road / Mamalahoa Highway intersection, and excluding the Kaomoloa Road / Connector Road intersection improvements, hereinafter called the "**Connector Road - Phase 3 Roadway Improvements**", in the vicinity of those certain related subdivision developments known as LUALA'I AT PARKER RANCH PHASE 3 ("SUB. NO. 2004-0221")

AND LUALA'I AT PARKER RANCH PHASE 4 ("SUB NO. 06-000279"), situate at Waikoloa and Pu'ukapu, Waimea, South Kohala, Island of Hawaii, County and State of Hawaii, Tax Map Key No. (3) 6-7-002:057, 059, 060 and 062; and

WHEREAS, the Connector Road - Phase 3 Roadway Improvements shall be constructed in accordance with construction plans and specifications approved by all appropriate agencies and further approved by the Planning Department of the County of Hawaii in the above-referenced Subdivision Files, and by this reference made a part of this Agreement,

WHEREAS, the Subdivider has agreed to provide a surety bond to assure that the Connector Road - Phase 3 Roadway Improvements shall be completed to satisfy the following: the requirements of Condition 5d of the March 22, 2005 Tentative Subdivision Approval letter in SUB NO. 2004-0221, the Connector Road - Phase 3 requirements of SUB NO. 06-000279, and the Connector Road preconditions to the issuance of building permits and occupancy of the residential units in SUB NO. 2004-0221 and SUB NO. 06-000279 within the first development increment arising from Condition M(1) of Zoning Ordinance No. 02-25.

NOW, THEREFORE, IT IS HEREBY AGREED, by and between the Subdivider and the County, that:

1. On or before two (2) years from issuance of the Final Subdivision Approval, or within such time extension as may be mutually agreed upon by the County and the Subdivider in writing, the Subdivider shall make, install, and complete all of the above-mentioned Connector Road - Phase 3 Roadway Improvements in accordance with the construction plans and specifications therefore, in accordance with the requirements and standards of the County, and to the satisfaction of the applicable governmental agencies, departments, boards, commissions, officers and employees.

2. In consideration of the Subdivider's agreements herein, and subject to the posting of the Bond securing the construction of the Connector Road - Phase 3 Roadway Improvements described herein, the Connector Road preconditions to the issuance of building permits and occupancy of the residential units in SUB NO. 2004-0221 and SUB NO. 06-000279 within the first development increment arising from Condition M(1) of Zoning Ordinance No. 02-25 shall

be satisfied, provided however, that the Subdivider shall comply with all other applicable requirements for subdivision and occupancy of the residential units in SUB No. 2004-0221 and SUB No. 06-000279.

3. In the event the Subdivider fails to complete all required Connector Road - Phase 3 Roadway Improvements within the time specified hereinabove or such extension as may be mutually agreed upon in writing, or fails to timely complete or abandons the subdivisions prior to final approval, or this Agreement is terminated by the County for the Subdivider's noncompliance with any provision contained in this Agreement, the County, through its applicable agencies, departments, boards, commissions, officers and employees, may complete the Connector Road - Phase 3 Roadway Improvements and recover the full cost and expense thereof from the Subdivider.

4. The Subdivider's obligation to complete the Connector Road - Phase 3 Roadway Improvements as specified in this Agreement shall be secured by a good and sufficient surety bond (other than personal surety), certified check, irrevocable letter of credit, or other security acceptable to the Planning Department and Department of Public Works, and approved by the Corporation Counsel, such bond or other acceptable security to be payable to the County Director of Finance, and conditioned upon the faithful performance of any and all work required to be done by the Subdivider in accordance with the provisions of this Agreement. Said bond or other acceptable security shall be no less than the sum of FOUR MILLION FIVE HUNDRED SEVEN THOUSAND AND NO/100 DOLLARS (\$4,507,000.00).

5. If the efforts of the Subdivider to complete the Connector Road - Phase 3 Roadway Improvements 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, administrative appeals and/or litigation relating to SUB NO. 2004-0221 and/or SUB NO. 06-000279, governmental regulation or any other cause beyond the control of the Subdivider which renders unobtainable at commercially reasonable cost any substantial amount of labor, materials or equipment necessary therefor, 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 Subdivider has made a request therefor, and despite reasonable efforts, the Subdivider is unable to proceed, then, and in any such event, the time periods set forth in this Agreement for completion of the Connector Road - Phase 3 Roadway Improvements shall be extended by the number of days that the Subdivider is delayed as a result of the specified event of Force Majeure.

6. Subdivider, in their fiduciary capacities as Trustees as aforesaid and not in their individual capacities, do hereby covenant and agree with County that Subdivider has full power and authority to construct and install all of the improvements for the Connector Road - Phase 3 Roadway improvements.

7. Any liability that may arise as a consequence of the execution of this instrument by or on behalf of the Trustees Under that Certain Unrecorded Land Trust Agreement for the Parker Land Trust, dated September 13, 2002, as Amended, shall be a liability of said Parker Land Trust, and not the personal liability of any trustee, corporate officer or director of any affiliated corporation or partnership, or employee of said Parker Land Trust.

8. This Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts together shall constitute one and the same document, binding on all parties hereto, notwithstanding that all of the parties are not signatory to the original or to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this document, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

**(THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK)**

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

RECOMMEND APPROVAL  
(as applicable)

PLANNING DEPARTMENT

By *Chris Yuen*  
Its Director

DEPARTMENT OF PUBLIC WORKS

By *James C. McClure*  
Its Director

TRUSTEES UNDER THAT CERTAIN  
UNRECORDED LAND TRUST  
AGREEMENT FOR THE PARKER LAND  
TRUST dated SEPTEMBER 13, 2002, as  
AMENDED, acting in their fiduciary and  
not in their individual capacities

*John B. Ray*  
JOHN B. RAY

*Warren H. Haruki*  
WARREN H. HARUKI

*Timothy E. Johns*  
TIMOTHY E. JOHNS

“Subdivider”

COUNTY OF HAWAII, a municipal  
corporation

By *Dee Kaeha*  
DEE KAHEA  
Its Managing Director

“County”

APPROVED AS TO FORM  
AND LEGALITY

*Deputy/Corporation Counsel*  
Deputy/Corporation Counsel

Date: APR 16 2007