

**This Report Is Not a Commission Approval or Disapproval of This Condominium Project**

**AMENDED DEVELOPER'S PUBLIC REPORT  
FOR A CONDOMINIUM**

CONDOMINIUM PROJECT NAME	GEORGE A. FERN CONDOMINIUM
Project Address	7206 and 7198A Kahuna Road, Kapaa, Hawaii 96746
Registration Number	6870
Effective Date of Report	September 9, 2015
Developer(s)	CECELIA FERN, Trustee of the Cecelia Fern Trust dated February 17, 1994 as restated on March 14, 2014

**Preparation of this Report**

The Developer prepared this report to disclose relevant information, including "material facts", that are reasonably known to the Developer about the condominium project covered by this report. This report has been prepared pursuant to the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended from time to time. The law defines "material facts" to mean "any fact, defect, or condition, past or present that to a reasonable person, would be expected to measurably affect the value of the project, unit, or property being offered or proposed to be offered for sale."

This report has not been prepared or issued by the Real Estate Commission or any other governmental agency. The issuance by the Commission of an effective date for this Developer's Public Report (1) does not mean that the Commission approves or disapproves of the project; (2) does not mean that the Commission thinks that either all material facts or all pertinent changes, or both, about the project have been fully or adequately disclosed; and (3) is not the Commission's judgment of the value or merits of the project.

This report may be used by the Developer for promotional purposes only if it is used in its entirety. No person shall advertise or represent that the Commission has approved or recommended the project, this report or any of the documents submitted with Developer's application for registration of this project.

This report will be amended if, after the effective date of this report, any changes, either material or pertinent changes, or both, occur regarding the information contained in or omitted from this report. In that case, the Developer is required to submit immediately to the Commission an amendment to this report or an amended Developer's Public Report, clearly reflecting the changes, including any omitted material facts, together with such supporting information as may be required by the Commission. In addition, the Developer may choose at any time to change or update the information in this report. Annually, at least thirty days prior to the anniversary date of the Effective Date of this report, the Developer shall file an annual report to update the material contained in this report. If there are no changes, the Developer is required to state that there are no changes. The Developer's obligation to amend this report or to file annual reports ends when the initial sales of all units in the project have been completed.

Purchasers are encouraged to read this report carefully and to seek professional advice before signing a sales contract for the purchase of a unit in the project.

Signing a sales contract may legally bind a purchaser to purchase a unit in the project, though a purchaser may have rights to cancel or rescind a sales contract under particular circumstances that may arise.

*This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request.*

### Special Attention -- Significant Matters

[Use this page for special or significant matters which should be brought to the purchaser's attention. At minimum "Subject Headings" and page numbers where the subject is explained more may be used.]

**The developer's inclusion of a disclosure or an explanation of any or all of the following applicable significant matters in this part of the developer's public report shall not be construed to constitute the Commission's:**

- **Approval or disapproval of the project;**
- **Representation that the developer has fully or adequately disclosed either all material facts or all pertinent changes, or both, concerning the project;**
- **Representation that the developer's disclosures of other material facts elsewhere in this report is less important; or**
- **Judgment of the value or merits of the project.**

**The commission reserves the right to request that the developer include these special and significant matters elsewhere in the developer's public report.**

This Condominium is an agricultural condominium on land zoned agriculture and open. In the agricultural district farm dwellings are allowed in some circumstances but the Developer does not represent that any unit owner will be permitted to construct a farm dwelling and prospective purchasers should check with the County or their architects for the detailed requirements for constructing a farm dwelling. All residential units to be built on each unit must comply with the Farm Dwelling Requirements set forth herein on Page 18.

Unit 1 was constructed in 1995 as an Additional Dwelling Unit ("ADU") pursuant to Article 26 of the Kauai County Code. Because the unit is an ADU, BEFORE EXECUTING A RESERVATION AGREEMENT OR EXECUTING A SALES CONTRACT FOR UNIT 1, PROSPECTIVE BUYERS SHOULD CONDUCT INDEPENDENT RESEARCH AND INVESTIGATION TO DETERMINE WHETHER AND WHICH RESTRICTIONS EXIST ON THE UNIT THAT MAY PREVENT FURTHER DEVELOPMENT OF UNIT 1 IN ANY MANNER. THE BUYER IS ADVISED TO CONTACT THE COUNTY OF KAUAI PLANNING DEPARTMENT AND AN INDEPENDENT PROFESSIONAL ARCHITECT AND/OR ENGINEER REGARDING THESE MATTERS.

This is a CONDOMINIUM PROJECT, NOT a subdivision. The land area beneath and immediately appurtenant to each unit is designated a LIMITED COMMON ELEMENT and is NOT a legally subdivided lot. The lines (x--x--x) on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.

Facilities and improvements normally associated with County approved subdivision may not necessarily be provided for and services such as County street maintenance and trash collection will not be available for interior roads.

This Public Report does not constitute an approval of the project by the Real Estate Commission or any other governmental agency.

Helene L. Taylor's role as Condominium Attorney expires on the date this amendment is approved by the Real Estate Commission Consulting attorney.

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## **General Information On Condominiums**

A condominium is a special form of ownership of real property. To create a condominium in Hawaii after July 1, 2006, the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, must be followed. In addition, certain requirements and approvals of the county in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land and/or the building(s) and other improvements are leased to the purchaser. The lease for the land usually requires that at the end of the lease term, the lessees (unit owners) deliver their interest in the land to the lessor (fee property owner).

If you are a typical condominium unit owner, you will have two kinds of ownership: (1) ownership in your individual unit; and (2) a percentage interest in the common elements.

You will be entitled to exclusive ownership and possession of your unit. Subject to the documents governing them, condominium units may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift or operation of law.

Your unit will, however, be part of the group of units that comprise the condominium project. Study the project's Declaration of Condominium Property Regime, Bylaws of the Association of Unit Owners, Condominium Map and House Rules, if any, which are being concurrently delivered to you with this report. These documents contain important information on the use and occupancy of the units and the common elements of the project, as well as the rules and regulations of conduct for unit owners, tenants and guests.

## **Operation of the Condominium Project**

The Association of Unit Owners is the entity through which unit owners may take action with regard to the administration, management and operation of the condominium project. Each unit owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as a unit owner. The Board and officers can take certain actions without the vote of the unit owners. For example, the Board may hire and fire employees, increase or decrease maintenance fees, adopt budgets for revenues, expenses and reserves and regulate the use, maintenance, repair and replacement of common elements. Some of these actions may significantly impact the unit owners.

Until there is a sufficient number of purchasers of units to elect a majority of the Board, it is likely at first that the Developer will effectively control the affairs of the Association. It is frequently necessary for the Developer to do so during the early stages of development and the Developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective purchasers should understand that it is important to all unit owners that the transition of control from the Developer to the unit owners be accomplished in an orderly manner and in a spirit of cooperation.

**1. THE CONDOMINIUM PROJECT**

**1.1 The Underlying Land**

Fee Simple or Leasehold Project	<input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold (attach Leasehold Exhibit)
Developer is the Fee Owner	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Fee Owner's Name if Developer is not the Fee Owner	
Address of Project	Unit 1: 7206 Kahuna Road, Kapaa, Hawaii 96746 Unit 2: 7198A Kahuna Road, Kapaa, Hawaii 96746
Address of Project is expected to change because	No
Tax Map Key (TMK)	(4) 4-6-004-040
Tax Map Key is expected to change because	Individual unit numbers will be added to the TMK
Land Area	5.03 acres
Developer's right to acquire the Property if Developer is not the Fee Owner (describe)	N/A

**1.2 Buildings and Other Improvements**

Number of Buildings	2
Floors Per Building	1
Number of New Building(s)	0
Number of Converted Building(s)	2
Principle Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	wood, concrete slab, asphalt tile roof

**1.3 Unit Types and Sizes of Units**

Unit Type	Quantity	BR/Bath	Net Living Area	Net Other Areas	Other Areas (lanai, garage, etc)	Total Area
1	1	5/3	1870 s.f.	455 s.f. gross	Garage	2,325 s.f.
2	1	0/0	0	16 s.f. gross	CPR Structre	16 s.f/
See Exhibit <u>    A    </u> .						

2	<b>Total Number of Units</b>
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**Note:** Net Living Area is the floor area of the unit measured from the interior surface of the perimeter walls of the unit. Other documents and maps may give floor area figures that differ from those above because a different method of determining floor area may have been used.

**1.4 Parking Stalls**

Total Parking Stall in the Project:	4
Number of Guest Stalls in the Project:	0
Number of Parking Stalls Assigned to Each Unit:	2
Attach Exhibit <u>B</u> specifying the Parking Stall number(s) assigned to each unit and the type of parking stall(s) (regular, compact or tandem and indicate whether covered or open).	
If the Developer has reserved any rights to assign or re-assign parking stalls, describe such rights.	

**1.5 Boundaries of the Units**

**Boundaries of the unit:**  
 All spaces and fixtures w/in a unit's boundaries are part of the Unit. All exterior fixtures designed to serve a single unit but located outside the boundaries are a limited common element exclusively to that unit. If fixtures are partially in and outside the boundaries of a unit, the portion serving the unit is a limited common element, the portion serving all units is a common element. (See Declaration par. 3 and Condo

**1.6 Permitted Alterations to the Units**

Permitted alterations to the unit (if the unit is defined as a non-physical or spatial portion of the project, also describe what can be built within such portion of the project):  
 Unit owners may construct, reconstruct, repair, renovate, remodel or alter a unit provided the unit owner complies with Federal, State and County laws and the project documents and obtains all governmental approval. (See Declaration par. 15)

**1.7 Common Interest**

**Common Interest:** Each unit will have a percentage interest in the common elements appurtenant to each unit. This interest is called the "common interest". It is used to determine each unit's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by unit owners. The common interest for each unit in this project, as described in Declaration, is:  
 Described in Exhibit \_\_\_\_\_ .  
 As follows:  
 Unit 1: 50%; Unit 2: 50%  
 Because this is a two unit project and each unit has a 50% interest in the common element, all unit owners must attend the Association meetings in order to have a quorum to conduct business and all unit owners must agree in order for an action to be approved.

**1.8 Recreational and Other Common Facilities (Check if applicable):**

<input type="checkbox"/>	Swimming pool
<input type="checkbox"/>	Laundry Area
<input type="checkbox"/>	Storage Area
<input type="checkbox"/>	Tennis Court
<input type="checkbox"/>	Recreation Area
<input type="checkbox"/>	Trash Chute/Enclosure(s)
<input type="checkbox"/>	Exercise Room
<input type="checkbox"/>	Security Gate
<input type="checkbox"/>	Playground
<input type="checkbox"/>	Other (describe):

**1.9 Common Elements**

**Common Elements:** Common elements are those parts of the condominium project other than the individual units and any other real estate for the benefit of unit owners. Although the common elements are owned jointly by all unit owners, those portions of the common elements that are designated as limited common elements (see Section 1.10 below) may be used only by those units to which they are assigned. In addition to the common facilities described in Section 1.8 above, the common elements for this project, as described in the Declaration, are set forth below.

Described in Exhibit C .

Described as follows:

Common Element	Number
Elevators	0
Stairways	0
Trash Chutes	0

**1.10 Limited Common Elements**

**Limited Common Elements:** A limited common element is a portion of the common elements that is reserved for the exclusive use of one or more but fewer than all units in the project.

Described in Exhibit D .

Described as follows:

**1.11 Special Use Restrictions**

The Declaration and Bylaws may contain restrictions on the use and occupancy of the units. Restrictions for this project include, but are not limited to, those described below.

<input checked="" type="checkbox"/>	Pets: As provided in Section 13.1 of the Bylaws
<input checked="" type="checkbox"/>	Number of Occupants: As provided in Section 7 of the Declaration
<input type="checkbox"/>	Other:
<input type="checkbox"/>	There are no special use restrictions.

**1.12 Encumbrances Against Title**

An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of a unit in the project. Encumbrances shown may include blanket liens which will be released prior to conveyance of a unit (see Section 5.3 on Blanket Liens).

Exhibit E describes the encumbrances against title contained in the title report described below.

Date of the title report: November 20, 2014

Company that issued the title report: Title Guaranty of Hawaii, Inc.

**1.13 Uses Permitted by Zoning and Zoning Compliance Matters**

Uses Permitted by Zoning				
	Type of Use	No. of Units	Use Permitted by Zoning	Zoning
<input type="checkbox"/>	Residential		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Commercial		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Mix Residential/Commercial		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Hotel		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Timeshare		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Ohana		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Industrial		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input checked="" type="checkbox"/>	Agricultural	2	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Agricultural/Open
<input type="checkbox"/>	Recreational		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Other (Specify):		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Variances to zoning code have been granted.			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Describe any variances that have been granted to zoning code				

**1.14 Other Zoning Compliance Matters**

Conforming/Non-Conforming Uses, Structures and Lots			
<p>In general, a non-conforming use, structure or lot is a use, structure or lot that was lawful at one time but that does not now conform to present zoning requirements. Under present zoning requirements, limitations may apply to extending, enlarging or continuing the non-conformity and to altering and repairing non-conforming structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.</p> <p>If a variance has been granted or if uses, structures or lots are either non-conforming or illegal, the purchaser should consult with county zoning authorities as to possible limitations that may apply in situations such as those described above.</p> <p>A purchaser may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure or lot.</p>			
	Conforming	Non-Conforming	Illegal
Uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Structures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lot	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>If a non-conforming use, structure or lot exists in this project, this is what will happen under existing laws or codes if the structure is damaged or destroyed:</p>			

**1.15 Conversions**

<p><b>Developer's statements regarding units that may be occupied for residential use and that have been in existence for five years or more.</b></p>	<p><input checked="" type="checkbox"/> <b>Applicable</b></p> <p><input type="checkbox"/> <b>Not Applicable</b></p>
<p>Developer's statement, based upon a report prepared by a Hawaii-licensed architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the units: The Developer adopts the statement of the condition of all structural components and mechanical and electrical installations contained in the Engineer's Condition Report, attached hereto as Exhibit "J".</p>	
<p>Developer's statement of the expected useful life of each item reported above: Pursuant to HRS Section 514B-84(a)(i)(8), the Developer makes no representations in regard to the useful life of the structural components and mechanical and electrical installations noted in Exhibit "J".</p>	
<p>List of any outstanding notices of uncured violations of any building code or other county regulations: N/A</p>	
<p>Estimated cost of curing any violations described above: N/A</p>	

<p><b>Verified Statement from a County Official</b></p>	
<p>Regarding any converted structures in the project, attached as Exhibit I ___ is a verified statement signed by an appropriate county official which states that either:</p> <p>(A) The structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built, and specifying, if applicable:</p> <ul style="list-style-type: none"> <li>(i) Any variances or other permits that have been granted to achieve compliance;</li> <li>(ii) Whether the project contains any legal non-conforming uses or structures as a result of the adoption or amendment of any ordinances or codes; and</li> <li>(iii) Any violations of current zoning or building ordinances or codes and the conditions required to bring the structure into compliance;</li> </ul> <p style="text-align: center;">or</p> <p>(B) Based on the available information, the county official cannot make a determination with respect to the foregoing matters in (A) above.</p>	
<p>Other disclosures and information: See Developer's comments on Page 1a ("Special Attention")</p>	

**1.16 Project In Agricultural District**

<p><b>Is the project in an agricultural district as designated by the land use laws of the State of Hawaii?</b>  <b>If answer is "Yes", provide information below.</b></p>	<p><input checked="" type="checkbox"/> Yes  <input type="checkbox"/> No</p>
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable state and county land use laws? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the answer is "No", provide explanation.</p>	
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable county real property tax laws? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the answer is "No", provide explanation and state whether there are any penalties for noncompliance.</p>	
<p>Other disclosures and information:</p>	

**1.17 Project with Assisted Living Facility**

<p><b>Does the project contain any assisted living facility units subject to Section 321-11(10), HRS?</b>  <b>If answer is "Yes", complete information below.</b></p>	<p><input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No</p>
<p>Licensing requirements and the impact of the requirements on the costs, operations, management and governance of the project.</p>	
<p>The nature and the scope of services to be provided.</p>	
<p>Additional costs, directly attributable to the services, to be included in the association's common expenses.</p>	
<p>The duration of the provision of the services.</p>	
<p>Other possible impacts on the project resulting from the provision of the services.</p>	
<p>Other disclosures and information.</p>	

## 2. PERSONS CONNECTED WITH THE PROJECT

<b>2.1 Developer(s)</b>	<p>Name: Cecelia Fern, Trustee</p> <p>Business Address: 7206 Kahuna Road Kapaa, Hawaii 96746</p> <p>Business Phone Number : 808-431-4175</p> <p>E-mail Address:</p>
<p>Names of officers and directors of developers that are corporations; general partners of a partnership; partners of a limited liability partnership (LLP); or a manager and members of a limited liability company (LLC) (attach separate sheet if necessary).</p>	
<b>2.2 Real Estate Broker</b>	<p>Name: Coreen S. Sarabia</p> <p>Business Address: Kauai Realty 2970 Kress Street, Lihue, Hi 96766</p> <p>Business Phone Number: 808-822-4004</p> <p>E-mail Address: coreen@coreensarabia.com</p>
<b>2.3 Escrow Depository</b>	<p>Name: Title Guaranty Escrow Services, Inc.</p> <p>Business Address: 4414 Kukui Grove St. Suite 104 Lihue, Hawaii 96766</p> <p>Business Phone Number: 808-245-3381</p>
<b>2.4 General Contractor</b>	<p>Name:</p> <p>Business Address:</p> <p>Business Phone Number:</p>
<b>2.5 Condominium Managing Agent</b>	<p>Name: Self Managed by the Association</p> <p>Business Address: 7206 Kahuna Road Kapaa, Hawaii 96746</p> <p>Business Phone Number: TBD</p>
<b>2.6 Attorney for Developer</b>	<p>Name: Helene L. Taylor*</p> <p>Business Address: c/o 7206 Kahuna Road, Kapaa Hi 96746 *Position ends on 09/30/2015</p> <p>Business Phone Number: 415-505-1031</p>

### 3. CREATION OF THE CONDOMINIUM AND CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances (Regular System) or filing in the Office of the Assistant Registrar of the Land Court, or both, a Declaration of Condominium Property Regime, a Condominium Map and the Bylaws of the Association of Unit Owners. The Condominium Property Act (Chapter 514B, HRS), the Declaration, Bylaws and House Rules control the rights and obligations of the unit owners with respect to the project and the common elements, to each other, and to their respective units.

#### 3.1 Declaration of Condominium Property Regime

The Declaration of Condominium Property Regime contains a description of the land, buildings, units, common interests, common elements, limited common elements, and other information relating to the condominium project.

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	November 12, 2008	2009-011644

#### Amendments to Declaration of Condominium Property Regime

Land Court or Bureau of Conveyances	Date of Document	Document Number
First	March 1, 2010	2010-027346
Second	July 2, 2013	A-49310723
Third	June 15, 2015	A-56441202

#### 3.2 Bylaws of the Association of Unit Owners

The Bylaws of the Association of Unit Owners govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Unit Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters that affect how the condominium project will be governed.

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	November 12, 2008	2009-011645

#### Amendments to Bylaws of the Association of Unit Owners

Land Court or Bureau of Conveyances	Date of Document	Document Number

#### 3.3 Condominium Map

The Condominium Map contains a site plan and floor plans, elevations and layout of the condominium project. It also shows the floor plan, unit number and dimensions of each unit.

Land Court Map Number	
Bureau of Conveyances Map Number	4766
Dates of Recordation of Amendments to the Condominium Map: July 2, 2013	

**3.4 House Rules**

The Board of Directors may adopt rules and regulations (commonly called "House Rules") to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the Developer. Changes to House Rules do not need to be recorded to be effective.

The House Rules for this project:

Are Proposed	<input type="checkbox"/>	
Have Been Adopted and Date of Adoption	<input type="checkbox"/>	
Developer does not plan to adopt House Rules	<input checked="" type="checkbox"/>	

**3.5 Changes to the Condominium Documents**

Changes to Condominium Documents: Changes to the Declaration, Bylaws and Condominium Map are effective only if they are duly adopted and recorded. Where permitted, the minimum percentages of the common interest that must vote for or give written consent to changes to the Declaration, Bylaws and Condominium Map are set forth below. The percentages for any individual condominium project may be more than the minimum set by law if the Declaration or Bylaws for the project so provide.

Document	Minimum Set by Law	This Condominium
Declaration	67%	67%
Bylaws	67%	67%

**3.6 Rights Reserved by the Developer to Make Changes to the Condominium Project or Condominium Documents**

<input type="checkbox"/>	No rights have been reserved to the Developer to change the Declaration, Bylaws, Condominium Map or House Rules (if any).
<input checked="" type="checkbox"/>	<p>Developer has reserved the right to change the Declaration, Bylaws, Condominium Map and House Rules (if any) and to add to or merge the project or to develop the project in one or more phases, and such rights are summarized as follows:</p> <p>The Developer reserves the right, at the Developer's sole discretion, at any time prior to the first recording in the Bureau of Conveyances of the State of Hawaii, of a conveyance or transfer (other than for security) of a unit and its appurtenances to a party not a signatory of the project documents, to amend the Declaration and/or Condominium Map in any manner, without approval or consent of any unit purchaser.</p>

#### 4. CONDOMINIUM MANAGEMENT

##### 4.1 Management of the Common Elements

<b>Management of the Common Elements:</b> The Association of Unit Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.	
The initial Condominium Managing Agent for this project is (check one):	
<input type="checkbox"/>	Not affiliated with the Developer
<input checked="" type="checkbox"/>	None (self-managed by the Association)
<input type="checkbox"/>	The Developer or an affiliate of the Developer
<input type="checkbox"/>	Other (explain)

##### 4.2 Estimate of the Initial Maintenance Fees

<b>Estimate of the Initial Maintenance Fees:</b> The Association will make assessments against your unit to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your unit and the unit may be sold through a foreclosure proceeding. Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.
Exhibit F contains a breakdown of the estimated annual maintenance fees and the monthly estimated maintenance fee for each unit, certified to have been based on generally accepted accounting principles, with the Developer's statement as to when a unit owner shall become obligated to start paying the unit owner's share of the common expenses.

##### 4.3 Utility Charges to be Included in the Maintenance Fee

If checked, the following utilities are included in the maintenance fee:	
<input type="checkbox"/>	Electricity for the common elements
<input type="checkbox"/>	Gas for the common elements
<input type="checkbox"/>	Water
<input type="checkbox"/>	Sewer
<input type="checkbox"/>	TV Cable
<input type="checkbox"/>	Other (specify)

##### 4.4 Utilities to be Separately Billed to Unit Owner

If checked, the following utilities will be billed to each unit owner and are not included in the maintenance fee:	
<input checked="" type="checkbox"/>	Electricity for the Unit only
<input checked="" type="checkbox"/>	Gas for the Unit only
<input checked="" type="checkbox"/>	Water
<input checked="" type="checkbox"/>	Sewer
<input checked="" type="checkbox"/>	TV Cable
<input type="checkbox"/>	Other (specify)

## 5. SALES DOCUMENTS

### 5.1 Sales Documents Filed with the Real Estate Commission

<input checked="" type="checkbox"/>	Specimen Sales Contract Exhibit <u>G</u> contains a summary of the pertinent provisions of the sales contract. Including but not limited to any rights reserved by the Developer.
<input checked="" type="checkbox"/>	Escrow Agreement dated: Name of Escrow Company: Title Guaranty of Hawaii, Inc. Exhibit <u>H</u> contains a summary of the pertinent provisions of the escrow agreement.
<input checked="" type="checkbox"/>	Other: Exclusive Right to Sell Listing Contracts for each unit

### 5.2 Sales to Owner-Occupants

If this project contains three or more residential units, the Developer shall designate at least fifty percent (50%) of the units for sale to Owner-Occupants.

<input checked="" type="checkbox"/>	The sales of units in this project are subject to the Owner-Occupant requirements of Chapter 514B.
<input type="checkbox"/>	Developer has designated the units for sale to Owner-Occupants in this report. See Exhibit ____ .
<input type="checkbox"/>	Developer has or will designate the units for sale to Owner-Occupants by publication.

### 5.3 Blanket Liens

Blanket Liens: A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project or more than one unit that secures some type of monetary debt (such as a loan) or other obligation. Blanket liens (except for improvement district or utility assessments) must be released as to a unit before the developer conveys the unit to a purchaser. The purchaser's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the unit to the purchaser.

<input checked="" type="checkbox"/>	There are <u>no blanket liens</u> affecting title to the individual units.
<input type="checkbox"/>	There are <u>blanket liens</u> that may affect title to the individual units.

Type of Lien	Effect on Purchaser's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance

### 5.4 Construction Warranties

Construction Warranties: Warranties for individual units and the common elements, including the beginning and ending dates for each warranty (or the method of calculating them), are as set forth below:

Building and Other Improvements:

None - As-Is

Appliances:

None - As-Is

**5.5 Status of Construction, Date of Completion or Estimated Date of Completion**

Status of Construction: Unit 1 Construction completed in 1995 Unit 2 Construction completed in May 2013
Completion Deadline: If a sales contract for a unit is signed before the construction of the unit has been completed, or, in the case of a conversion, completion of any repairs, does not occur by the completion deadline set forth below, one of the remedies available to a purchaser is a cancellation of the purchaser's sales contract. The sales contract may include a right of the Developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract may also provide additional remedies for the purchaser.
Completion Deadline for any unit not yet constructed, as set forth in the sales contract:
Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract:

**5.6 Developer's Use of Purchaser Deposits to Pay for Project Construction Costs Before Closing or Conveyance**

The Developer is required to deposit all moneys paid by purchasers in trust under a written escrow agreement with a Hawaii licensed escrow depository. Escrow shall not disburse purchaser deposits to the Developer or on behalf of the Developer prior to closing, except if a sales contract is canceled or if Developer has met certain requirements, which are described below.

**5.6.1 Purchaser Deposits Will Not Be Disbursed Before Closing or Conveyance**

<input type="checkbox"/>	The Developer hereby declares by checking the box to the left that it shall use its own funds to complete the construction of the condominium project by the date indicated in Section 5.5 of this report, and the Developer, pursuant to its own analysis and calculations, certifies that it has sufficient funds to complete the construction of the condominium project.  <i>If this box is checked, Section 5.6.2, which follows below, will not be applicable to the project.</i>
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**5.6.2 Purchaser Deposits Will Be Disbursed Before Closing**

Hawaii law provides that, if certain statutory requirements are met, purchaser deposits in escrow under a binding sales contract may be used before closing to pay for certain project costs. For this project, the Developer indicates that purchaser deposits may be used for the following purposes (check applicable box):	
<input type="checkbox"/>	For new construction: to pay for project construction costs described in the Developer's budget and approved by the Developer's lender or an otherwise qualified, financially disinterested person; or
<input type="checkbox"/>	For conversions: to pay for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance and legal fees, and for other incidental expenses.

**5.6.2 Purchaser Deposits Will Be Disbursed Before Closing**

Hawaii law provides that, if certain statutory requirements are met, purchaser deposits in escrow under a binding sales contract may be used before closing to pay for certain project costs. For this project, the Developer indicates that purchaser deposits may be used for the following purposes (check applicable box):	
<input type="checkbox"/>	For new construction: to pay for project construction costs described in the Developer's budget and approved by the Developer's lender or an otherwise qualified, financially disinterested person; or
<input type="checkbox"/>	For conversions: to pay for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance and legal fees, and for other incidental expenses.

In connection with the use of purchaser deposits (check Box A or Box B):

<p><b>Box A</b></p> <p><input type="checkbox"/></p>	<p>The Developer has submitted all information and documents required by law and the Commission prior to the disbursement of purchaser deposits before closing. This means that the Developer may use such deposits before closing. If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>If Box A is checked, you should read and carefully consider the following notice, which is required by law:</p> <p><b><u>Important Notice Regarding Your Deposits:</u> Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase.</b></p>
<p><b>Box B</b></p> <p><input type="checkbox"/></p>	<p>The Developer has <b>not</b> submitted all information and documents required by law and the Commission, and, until all such information and documents are submitted, thus, the Developer cannot use purchaser deposits.</p> <p>If the Developer later submits all information and documents required by law and the Commission for the use of purchaser deposits, then the Developer must provide an amendment to this report or an amended developer's public report to each purchaser who has signed a sales contract. At such time, the <b><u>Important Notice Regarding Your Deposits</u></b> set forth immediately above will apply to all purchasers and will be restated in the amendment to this report or an amended developer's public report. When an effective date for such an amendment or an amended developer's public report is issued, <b><u>you will not have the right to rescind or cancel the sales contract by reason of such submission and amendment.</u></b> (This, however, does not affect your right to rescind for material changes or any other right you may have to rescind or cancel the sales contract, as described in Section 5.8 below.) If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>You should understand that, although the <b><u>Important Notice Regarding Your Deposits</u></b> set forth above does not currently apply to you, it might apply to you in the future, and, therefore, you should read and carefully consider it now to ensure that you understand the risk involved in deciding whether to proceed with your purchase.</p>

**Material House Bond.** If the Developer has submitted to the Commission a completion or performance bond issued by a material house instead of a surety as part of the information provided prior to the use of purchaser deposits prior to closing or conveyance of a unit, the Developer shall disclose the same below and disclose the impact of any restrictions on the Developer's use of purchaser deposits.

## 5.7 Rights Under the Sales Contract

Before signing the sales contract, prospective purchasers should carefully review all documents relating to the project. These include but are not limited to the documents listed below. Items 2, 3 and 4 are made a part of this public report, as well as Item 5, if any, and are being delivered to you with this report.

1.	<b>Developer's Public Report</b>
2.	<b>Declaration of Condominium Property Regime (and any amendments)</b>
3.	<b>Bylaws of the Association of Unit Owners (and any amendments)</b>
4.	<b>Condominium Map (and any amendments)</b>
5.	House Rules, if any
6.	Escrow Agreement
7.	Hawaii's Condominium Property Act (Chapter 514B, HRS, as amended) and Hawaii Administrative Rules (Chapter 16-107, adopted by the Real Estate Commission, as amended), provided that rules and regulations under Chapter 514B have not yet been adopted.
8.	Other:

Copies of the condominium and sales documents and amendments made by the Developer are available for review through the Developer or through the Developer's sales agent, if any. The Condominium Property Regime law (Chapter 514B, HRS) and the Administrative Rules (Chapter 107, HAR), are available online. Please refer to the following sites:

Website to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov)

Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

## 5.8 Purchaser's Right to Cancel or Rescind a Sales Contract

A purchaser's right to cancel a sales contract or to rescind a sales contract may arise under varying circumstances. In the sections below, some circumstances that will give rise to a purchaser's right to cancel or rescind are described, together with what a purchaser must do if the purchaser wishes to exercise any of the rights.

### 5.8.1 When a Sales Contract becomes Binding and Purchaser's 30-Day Right to Cancel a Sales Contract

A sales contract signed by a purchaser and the developer will not become binding on a purchaser or the Developer until the following events have taken place:

(1) The purchaser has signed the sales contract.  
(2) The Developer has delivered to the purchaser a true copy of the developer's public report with an effective date issued by the Commission, together with all amendments to the report as of the date of delivery, and the project's recorded Declaration and Bylaws, House Rules (if any), the Condominium Map and any amendments to them to date (all of which are a part of the developer's public report). If it is impracticable to include a letter-sized Condominium Map, the Developer must provide written notice of an opportunity to examine the Condominium Map.

(3) The Developer has delivered to the purchaser a notice of the purchaser's 30-day cancellation right on a form prescribed by the Commission.

(4) The purchaser does at least one of the following:

(a) Waives the purchaser's right to cancel the sales contract within 30 days from receipt of the notice of the purchaser's 30-day cancellation right; or

(b) Allows the 30-day cancellation period to expire without exercising the right to cancel; or

(c) Closes the purchase of the unit before the 30-day cancellation period expires.

The purchaser or the Developer may cancel the sales contract at any time during the 30-day cancellation period, and the sales contract will be canceled and the purchaser's deposits returned to the purchaser, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.

### **5.8.2 Right to Cancel a Sales Contract if Completion Deadline Is Missed**

In addition to the purchaser's 30-day cancellation right described in Section 5.8.1 above, when a sales contract is signed before completion of construction of a project, the purchaser will have the right to cancel if the unit is not completed by certain deadlines. In conversion projects, there must be a deadline for completion of any required repairs. Every sales contract shall contain an agreement of the Developer that the completion of construction shall occur on or before the completion deadline, and that completion deadline is set forth in this report in Section 5.5. The sales contract shall provide that the purchaser may cancel the sales contract at any time after the specified completion deadline, if completion of construction does not occur on or before the completion deadline, as the same may have been extended. Upon a cancellation, the purchaser's deposits shall be refunded, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.00.

### **5.8.3 Purchaser's Right to Rescind a Binding Sales Contract After a Material Change**

If a "material change" in a project occurs after a purchaser has signed a sales contract that has become binding, the purchaser will have a 30-day right to rescind after notification and description of the material change. A material change is defined in the Condominium Property Act to be any change that "directly, substantially and adversely affects the use or value of (1) a purchaser's unit or appurtenant limited common elements; or (2) those amenities of the project available for the purchaser's use."

The purchaser will be informed of the material change by the developer on a form prescribed by the Commission containing a description of the material change.

After notice of the material change, the purchaser may waive the right to rescind by:

- (1) Checking the waiver box on the rescission form; or
- (2) Letting the 30-day rescission period expire, without taking any action to rescind; or
- (3) Closing the purchase of the unit before the 30-day rescission period expires.

The rescission form must be signed by all purchasers of the affected unit and delivered to the developer no later than midnight of the 30<sup>th</sup> calendar day after the purchasers received the rescission form from the developer. Purchasers who validly exercise the right of rescission shall be entitled to a prompt and full refund of any moneys paid.

A rescission right shall not apply in the event of any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the project's Declaration.

These provisions shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for the sale of a unit or any applicable common law remedies.

## 6. MISCELLANEOUS INFORMATION NOT COVERED ELSEWHERE IN THIS REPORT

1. Residential dwellings are not permissible uses in agricultural use districts unless the dwelling is related to agricultural activity or is a farm dwelling. HRS section 205-4(a)(4) defines farm dwelling as a "single family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State or where agricultural activity provides income to the family occupying the dwelling." The penalty for a violation of HRS section 205-4 (a)(4) is a fine of not more than \$5,000. If a person cited for a violation fails to remove the violation within six months of the citation and the violation continues, the person is subject to citation for a new and separate violation. The fine for an additional violation shall not exceed \$5,000.

A Buyer must sign a Farm Dwelling Agreement to get a building permit to build a single-family residence. (See Exhibit K.) Each unit owner shall share the cost of maintaining agricultural activity on the Project. The level of agricultural activity on the Project must satisfy the County of Kauai Planning Department's requirements for the issuance of a building permit and execution of a Farm Dwelling Agreement for each unit owner.

2. A portion of Lot 42-B, which includes a large portion of Unit 1, is subject to flooding. See FEMA Map No. 185, which shows zone "X". Refer to the Condominium Map. The Buyer should research flood risks before buying a unit.

3. Lot 42-B is not assured a dependable supply of water. Upon requesting water service, unit owners may be required to sign an elevation agreement with the County of Kauai water department. The agreement may require unit owners to accept water service as-is available and other conditions under department rules.

4. The project engineer Peter N. Taylor and the project attorney Helene L. Taylor are related. Helene L. Taylor's role as the project attorney terminates in 2015 on the day the Hawaii Real Estate Commission approves this amended DPR.

5. The Developer did not calculate the estimated replacement reserves in accord with HRS section 514B-148 or any applicable Hawaii Administrative Rules when preparing Exhibit E attached.

6. The Project is in compliance with all zoning and building ordinances, codes and other permitting requirements. There are no restrictions limiting or prohibiting agricultural uses or activities on the Project. There are no legal nonconforming conditions, uses, or structures in the Project.

7. A prospective buyer should be aware of the stringent requirements for renovations outlined in the "cumulative substantial improvement rule". Please read Hawaii DLNR's January 2015 article "I Didn't Plan to Renovate the ENTIRE House When I Bought it."  
[http://dlnreng.hawaii.gov/nfip/wp-content/uploads/sites/11/2015/01/Jan\\_2015.pdf](http://dlnreng.hawaii.gov/nfip/wp-content/uploads/sites/11/2015/01/Jan_2015.pdf)

8. Without conducting invasive examinations of covered plumbing, electrical and structural components, the existing improvements on the Project appear to be in sound condition. No representations are made regarding the useful life of the units. There are no outstanding notices of uncured violations of building codes or other regulations.



## **EXHIBIT "A"**

### **DESCRIPTION OF BUILDINGS**

Two (2) freehold estates are hereby created and designated, and hereinafter referred to as "Condominium Units", "Units" or "Unit". Specifically, the two (2) estates so created and designated are referred to hereinafter as Unit 1 and Unit 2. Said units consist of the undivided interest in the common elements of the project, the limited common element(s) appurtenant to the unit, as shown on the Condominium Map for the project and the unit, if any, constructed or to be constructed on the limited common element. The units are designated on plans incorporated herein by reference and being filed separately with the Bureau of Conveyances of the State of Hawaii. The units are as follows:

**Unit 1** is located as shown on the Condominium Map and consists of a single-family residence with five bedrooms, a living area, dining room, a family room, kitchen, workshop, laundry, and three bathrooms. The total living area is 1870 square feet (net). There also is a 455 square foot (gross) garage area.

**Unit 2** is located as shown on the Condominium Map and consists of a three-sided CPR structure with shade cloth walls, metal posts, and an earthen floor. The total gross area is 16 square feet (gross).

The approximate net floor area of a unit as set forth above is measured from the interior surface of the unit perimeter walls and includes all of the walls and partitions within its perimeter walls. THE FLOOR AREAS SHOWN ARE APPROXIMATE ONLY. THE DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE FLOOR AREA OF ANY PARTICULAR UNIT.

**END OF EXHIBIT "A"**

**EXHIBIT "B"**

**DESCRIPTION OF PARKING STALLS**

**Unit 1** does not have designated parking stalls, but there is sufficient room to park two cars on the unit.

**Unit 2** does not have designated parking stalls, but there is sufficient room to park two cars on the unit.

**END OF EXHIBIT "B"**

## **EXHIBIT "C"**

### **COMMON ELEMENTS**

The common elements of the project shall specifically include, but are not limited to, the following:

1. A portion of the land described in Exhibits "A" and "B" of the Declaration, in fee simple.
2. All central and appurtenant installations for common services, including power, light, water, telephone and sewer; any and all apparatus and installations of common use and all other parts of the project necessary or convenient to its existence, maintenance and safety or normally in common use; any common driveways, roadways, walkways, sidewalks, stairways, grounds, landscaping, planters; and all other portions of the project, other than the units, including, specifically, but not limited to, the common elements mentioned in the Condominium Property Act that are actually constructed on the land. Each unit that has been created, together with its appurtenant interest in the common elements, constitutes, for all purposes, a separate parcel of real estate.

**END OF EXHIBIT "C"**

**EXHIBIT "D"**

**LIMITED COMMON ELEMENTS**

That certain land area upon and around which Units 1 and 2 are located, as shown and designated on the Condominium Map, and as described in the corresponding metes and bounds descriptions, the Declaration and the table below. The limited common elements are deemed limited common elements appurtenant to and for the exclusive use of each respective unit for the support of the building and other improvements comprising the unit, and for the yard, ingress and egress, parking and other permitted uses.

Unit Number	Area of Limited Common Element
1	4.23 acres
2	0.80 acres

**END OF EXHIBIT "D"**

**EXHIBIT "E"**  
**ESTIMATE OF INITIAL MAINTENANCE FEES\***

<u>Units</u>	<u>Monthly Fee</u>	<u>Annual Fee (Monthly Fee x 12)</u>
1 - 2	\$0	\$0

A breakdown of the estimated Maintenance Fees for each unit is as follows:

<u>Description</u>	<u>Monthly Fee per Unit</u>	<u>Annual Fee per Unit</u>
Property Taxes	\$0	\$0
Insurance	\$0	\$0
<b>Total:</b>	<b>\$0</b>	<b>\$0</b>

A unit owner shall become obligated for the payment of maintenance fees for the unit at the time the certificate of occupancy relating to the unit is issued by the appropriate county agency or upon conveyance of the unit to the Purchaser, whichever occurs later. Any maintenance fees associated with the common elements of the project shall be assessed as needed.

CECELIA FERN, Trustee of the Cecelia Fern Trust dated February 17, 1994 as restated on March 14, 2014, the Developer of GEORGE A. FERN CONDOMINIUM, hereby certifies that the above estimates of initial maintenance fees were prepared in accordance with generally accepted accounting principles. HOWEVER, the Developer makes NO REPRESENTATIONS, GUARANTEES OR WARRANTIES (express or implied) that the estimated property taxes and insurance will remain constant upon the sale of a unit because they may be subject to change by the Tax Collector and insurance companies (upon the sale of a unit in the project). Prospective purchasers of a condominium unit should conduct their own independent research and investigation to determine the exact property taxes and insurance for the project units by contacting the County of Kauai Tax Collector and an insurance company of the prospective buyer's choice.

  
 \_\_\_\_\_  
 CECELIA FERN  
 Trustee of the Cecelia Fern Trust

**END OF EXHIBIT "E"**

**EXHIBIT "F"**  
**ENCUMBRANCES AGAINST TITLE**

1. Real Property Taxes, if any, that may be due and owing.

Apt. 1 is covered by Tax Key: (4) 4-6-004-040, CPR No. 0001.

Apt. 2 is covered by Tax Key: (4) 4-6-004-040, CPR No. 0002.

-Note:- Attention is invited to the fact that the premises covered herein may be subject to possible rollback or retroactive property taxes.

2. Any and all improvement assessments that may be due and owing.
3. Mineral and water rights of any nature in favor of the State of Hawaii.
4. 100 year building setback line as shown on approved survey map attached to Affidavit dated August 29, 1978, recorded in Liber 13113 at Page 126.

5. SETBACK (7 feet wide)

PURPOSE : roadway

SHOWN : on approved survey map attached to Affidavit dated August 29, 1978, recorded in Liber 13113 at Page 126

6. The terms and provisions contained in the following:

INSTRUMENT : WARRANTY DEED

DATED : February 17, 1994

RECORDED : Document No. 94-038093

7. The terms and provisions contained in the following:

INSTRUMENT : ELEVATION AGREEMENT

DATED : July 26, 1994

RECORDED : Document No. 94-134832

PARTIES : GEORGE RICHARD FERN and CECELIA ANNE FERN and DEPARTMENT OF WATER, COUNTY OF KAUAI

## 8. NOTICE OF DEDICATION

DATED : January 19, 2000  
RECORDED : Document No. 2000-011535  
BY : GEORGE R. FERN, Trustee of The George R. Fern  
Trust dated February 17, 1994 and CECELIA FERN,  
Trustee of the Cecelia Fern Trust dated February 17,  
1994  
RE : dedication of land for Agriculture purposes  
PERIOD : 10 years, effective January 1, 2000

9. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

Declaration of Condominium Property Regime of the George A. Fern Condominium dated November 12, 2008 and recorded in the Bureau of Conveyances, State of Hawaii as Document No. 2009-011644

First Amendment to Declaration of Condominium Property Regime of the George A. Fern Condominium dated January 27, 2010 and recorded in the Bureau of Conveyances, State of Hawaii as Document No. 2010-027346

Second Amendment to Declaration of Condominium Property Regime of the George A. Fern Condominium dated July 2, 2013 and recorded in the Bureau of Conveyances, State of Hawaii as Document No. A-49310723

Bylaws of the George A. Fern Condominium dated November 12, 2008 and recorded in the Bureau of Conveyances, State of Hawaii as Document No. 2009-011645

Condominium Map No. 4766, recorded in the Bureau of Conveyances, State of Hawaii as amended on July 2, 2013 by Bureau of Conveyances, State of Hawaii Document No. A-49310723.

**END OF EXHIBIT "F"**

## EXHIBIT "G"

### SUMMARY OF DEPOSIT RECEIPT OFFER AND ACCEPTANCE AND CPR ADDENDUM (SALES CONTRACT)

The Deposit Receipt Offer and Acceptance, including the special terms and conditions included in the CPR Addendum attached thereto (also known as the "Sales Contract"), contains the terms and conditions under which a Purchaser will agree to buy a unit in the Project. Among other things, the contract states:

1. The total purchase price, method of payment and additional sums that must be paid in connection with the purchase of a unit, and requirements relating to the Purchaser's financing of the purchase of a unit.
2. If the DROA is signed before construction of the unit designated in the DROA is complete, the deadline for completion of construction of the unit shall occur on or before the deadline set forth in the DROA and/or CPR Addendum, provided that such deadline for completion of construction shall be extended on a day for day basis, for any delay in the occurrence of the completion of construction of the unit due to the occurrence of any force majeure event, as defined in the CPR Addendum.
3. Pursuant to Chapter 514B section 89, if completion of construction of the Purchaser's unit does not occur by the completion deadline set forth in the DROA and/or CPR Addendum, the Purchaser may cancel the Purchaser's sales contract and the Seller will instruct Escrow to return all of the Buyer's payments made, without interest, but less the escrow cancellation fee and all costs of the Seller, Escrow or any lending institution in processing the DROA and the CPR Addendum or any loan application.
4. That the Purchaser acknowledges having received and read the Developer's Public Report for the Project prior to signing the contract.
5. That neither the Seller nor any of its representatives has made any representation concerning rental of the unit, income or profit from the unit, or any other economic benefit to be derived from the purchase of the unit, including, but not limited to, any representation that the Seller or managing agent of the Project will provide, directly or indirectly, any services relating to the rental or sale of the unit.
6. That Section 514B-96, Hawaii Revised Statutes ("HRS"), requires the Developer of a residential condominium project designate certain units in the Project for sale to prospective "owner-occupants" pursuant to HRS section 514B-98; and pursuant to HRS section 514B-96.5, the Seller will use a chronological system to determine the order in which prospective owner-occupant purchasers will be given an opportunity to select one of the designated units in the Project.

7. That, if the DROA is signed under HRS section 514B-96, the Buyer will be required to reaffirm at the closing of escrow, the Buyer's intent to be an owner-occupant of the unit, and the Buyer shall execute and record at closing, an Affidavit of Intent to Purchase and Reside in an owner-occupant designated condominium residential unit as provided in section 514B-96.5 HRS. If the Buyer is unable to make such a reaffirmation, the DROA and the CPR Addendum will be rescinded and the Seller will instruct Escrow to return all of the Buyer's payments made, without interest, but less the escrow cancellation fee and all costs of the Seller, Escrow or any lending institution in processing the DROA or any loan application; provided, however, that if the DROA has become binding upon the Buyer pursuant to section 514B- 82, HRS, the Seller will keep all of the Buyer's payments up to an amount not to exceed the greater of (a) five percent of the Buyer's payments or (b) actual damages to the Seller.
8. That the Purchaser's payments will be held in escrow pursuant to the terms of the Escrow Agreement.
9. That the unit and the Project will be subject to various other legal documents the Purchaser should examine and the Seller may change the documents under certain circumstances.
10. That Purchaser will be acquiring the unit subject to all encumbrances, restrictions, covenants and conditions on the Project including, among other things, the following rights reserved by the Developer:
  - a. The right, at the Developer's sole discretion, to amend the Project, at its own expense and without compensation to any unit owner or mortgagee, by building, constructing, and adding, merging or phasing thereto, additional units.
  - b. The right to require the Association, Board, Design Review Committee and unit owners to obtain the Developer's prior written approval before taking any of the following actions within or about the condominium:
    - (1) Granting easements over, under, across or through the limited common element appurtenant to a unit for the use or benefit of any persons or property for vehicular and/or pedestrian access purposes, for underground utility purposes, and for such other uses as the unit owner shall decide, provided that such grant of easement shall not materially and adversely interfere with or affect the use or enjoyment of any other unit or unit owner.
    - (2) Altering the common interest, limited common interests and easements appurtenant to each condominium so that the construction or exterior appearance of the unit is changed.

(3) Constructing, altering, using or maintaining upon any limited common element or common element, any buildings or structures of a height in excess of that authorized by the Project documents and/or Design Review Committee.

(4) Altering or maintaining any accessory buildings (i.e. sheds) or main dwelling units, exclusive of any pre-approved porches, verandas, balconies, eaves, steps, and patios, on limited common elements or common elements.

(5) Relocating, realigning and/or developing additional, central and appurtenant installations for services to the unit affected by any (pre-approved) alteration for electricity, sewer and other utilities and services.

(6) Installing fences or walls along a unit's limited common area; installing solar panels in a unit's limited common area; installing or maintaining permanent exterior electric lighting; or tinting any windows in a unit.

(7) Submitting to any local, county, city or state agency, final plans and specifications for any proposed construction, reconstruction, refinishing or alteration of the exterior of any improvement located or to be located upon any common elements, or for any proposed excavation or fill or change to the natural or existing drainage or for removal of any existing trees having a height in excess of seven feet from any common elements.

(8) Placing and maintaining upon any common elements, such signs as the Association may deem necessary for the identification of the condominium and roads, for the regulation of traffic, parking and use of the common elements, and for the health, safety and general welfare of unit owners and the public.

11. That the Seller makes no warranties regarding the unit, the Project or anything installed or contained in the unit or the Project.
12. That the Purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.
13. That a deed conveying clear title will be given at closing, subject to certain obligations.
14. That, if the Purchaser defaults:
  - a. The contract may, at the Seller's option, be terminated by written notice to the Purchaser.

- b. The Seller may bring an action for damages for breach of contract. In the event of default by the Purchaser and/or a legal action or arbitration (including a claim by a Broker for commission), the prevailing party shall be entitled to recover all costs incurred including reasonable attorneys' fees.
- c. The Seller may retain the initial deposit and all additional deposits provided for in the DROA and CPR Addendum as liquidated damages, and Buyer shall be responsible for any costs incurred in accordance with the DROA.
- d. The Seller may pursue any other remedies available to the Seller under the DROA on account of the Buyer's default.

**SPECIAL NOTICE: THE FOREGOING SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE DROA AND CPR ADDENDUM. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE PURCHASER'S RIGHTS AND OBLIGATIONS, THE PURCHASER MUST REFER TO THE PURCHASER'S CONTRACT TO DETERMINE THE PURCHASER'S ACTUAL RIGHTS AND OBLIGATIONS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE CONTRACT, THE CONTRACT WILL CONTROL NOT THIS SUMMARY.**

**END OF EXHIBIT "G"**

## EXHIBIT "H"

### SUMMARY OF PORTIONS OF ESCROW AGREEMENT

The Escrow Agreement creates an arrangement under which, the deposits a Purchaser makes pursuant to a Deposit, Receipt, Offer Acceptance and CPR Addendum (also known as the "sales contract"), will be held by a neutral party ("Escrow"). The Escrow Agreement contains important provisions and establishes certain charges with which a Purchaser should be familiar. It is incumbent upon Purchasers to read with care, the executed Escrow Agreement on file with the Real Estate Commission and included in the Developer's Public Report.

Among other things, the Escrow Agreement provides:

1. Escrow will let the Purchaser know when payments are due.
2. Escrow will not release and disburse Purchaser's funds at closing, unless: (a) the Real Estate Commission has issued the Developer's Public Report on the Project and the Purchaser has acknowledged receipt of the same, (b) Developer has delivered a written legal opinion to Escrow stating the Purchaser's sales contract has become effective and the requirements of Chapter 514B, Hawaii Revised Statutes, as applicable, have been met, (c) Developer has given escrow a written waiver of any option reserved in any sales contract to cancel said sales contract, and (d) If it is intended that the sale of a unit will be made to Purchasers as owner-occupants, the required affidavits of the Purchasers must be reaffirmed and delivered to Escrow with proof of the date of receipt by the Purchaser of the Developer's Public Report, upon receipt of the Developer's Public Report by the Purchaser or no later than closing of escrow for the unit.

Purchaser has a legal right to cancel a sales contract up to midnight on the thirtieth day after receiving the Project disclosure packet and a signed Notice of Right to Cancel Sales Contract (DCCA form). Purchaser will receive a refund less applicable fees and costs. Purchaser may rescind a sales contract if there is a material change in the Project as defined by Hawaii law. Upon rescission of a sales contract, Purchaser shall be entitled to a refund of moneys paid.

3. Escrow may disburse funds to pay for construction costs of units and other improvements and fixtures in such amounts and at such times and in proportion to the valuation of the work completed by the contractor, as certified by a registered architect or engineer and as approved by Developer's mortgagee, if any, or an otherwise qualified financially disinterested person who shall be designated in writing by Developer and Developer's lender, if any, or a qualified, financially disinterested person who shall be designated in writing by Developer and Developer's lender, if any, who shall certify to Escrow in writing that such person is financially disinterested (and Escrow shall have the right to rely on said certification).

4. Escrow will arrange for and supervise the signing of all documents that are to be signed subsequent to and contemplated by the sales contract and shall promptly and diligently close the transaction.

5. Developer may close any or all sales at different times and Escrow agrees to cooperate with Developer to facilitate its performance of such partial closings.

6. If all documents necessary to effect each sales transaction are accurate and in no way defective, Escrow shall, within five business days (exclusive of the day of closing) file and record the documents necessary to effect the transfer of legal title to the Purchaser. If the documents are defective, Escrow shall file the documents within five business days after learning that the reason that prevented their filing or recording no longer exists.

7. If Purchaser fails to make the required payments to Escrow in a timely manner, Escrow shall notify Developer of Purchaser's failure. If Developer subsequently certifies in writing to Escrow that Developer has terminated the sales contract in accordance with the terms thereof and provides Escrow copies of all such notices of termination sent to the Purchaser, Escrow shall thereafter treat all funds of the Purchaser paid on account of the sales contract, as funds of the Developer and not as funds of the Purchaser.

8. The Purchaser may or will be entitled to a refund if the Purchaser or Developer cancels the sales contract in accordance with the cancellation provisions, or if the Purchaser terminates a reservation before the sales contract is binding. However, Escrow may deduct from the refund, cancellation fees in accordance with the sales contract. If the Purchaser does not claim any returned funds within sixty-days after receiving adequate notice, Escrow shall deposit the funds into a special account in a bank under the name of Developer as trustee for the benefit of such Purchaser. Escrow's duties with respect to such funds shall thereafter be released.

9. Unless waived, Purchaser is entitled to a refund of Purchaser's funds in escrow, together with any interest less Escrow's cancellation fee up to \$250 maximum if any of the following happen: (i) Seller and Purchaser make a written refund request, (ii) Seller gives Escrow written notice that Seller is exercising an option to cancel or rescind the sales contract, (iii) Purchaser gives Escrow written notice that Purchaser is exercising a right to cancel the sales contract or cancels because construction was not completed on time, (iv) Purchaser gives Escrow written notice that Purchaser is exercising a right to rescind the sales contract per HRS section 514B-87.

In the event a Purchaser rescinds a sales contract, interest accruing to the Seller will be reported to the IRS as earned income. If Seller required the Purchaser to secure a financing commitment the Seller will reimburse the Purchaser for any fees the Purchaser incurred while getting the requisite commitment. Sell will pay Escrow a cancellation fee up to \$250 maximum commensurate with work.

If an Owner-Occupant doesn't get adequate financing or a commitment thereto by the date set in the sales contract, Seller may cancel the sales contract. Upon written request from Seller or Purchaser, Escrow shall refund the Purchaser's funds without interest and less a cancellation fee up to \$250 commensurate with work.

Escrow is relieved from all liability for acting in accordance with the terms of the Escrow Agreement, unless otherwise notified to the contrary by the Developer or Purchaser. If any dispute involving Escrow should arise, Escrow may take no action but instead may await settlement by the appropriate legal proceeding or may file a suit for adjudication and shall thereafter be fully released and discharged from further obligations with respect to the moneys deposited. Developer and Purchaser shall indemnify and hold Escrow harmless.

10. The Escrow Agreement shall be binding and may only be terminated by either the Developer or Escrow upon fifteen days written notice to the other; provided, however, all transactions in process thereunder at the time of the termination shall be completed under the terms of the Agreement. The Agreement shall be interpreted under Hawaii Law, which shall control in all instances.

11. Escrow shall furnish Developer with a semi-monthly Developer's report that will cover the status of each sales contract in escrow, including without limitation, the status of receipts, interest-bearing deposits and disbursements. Escrow shall, upon certification from Developer that such payments are due, bill each Purchaser for payments due under the Purchaser's sales contracts.

12. The compensation of Escrow for performance under the Escrow Agreement shall be in accordance with the scheduled rates plus tax for each unit in the Project. The compensation for Escrow's performance does not include costs such as notary fees, recording fees, conveyance document preparation fees or any additional or special services requested by the Purchaser. Escrow shall also arrange for the issuance of a title insurance policy (Standard Owner's or ALTA Lender's policy), the premiums for which shall be based upon the escrow company's scheduled rates for each unit in the Project. An additional fee of Two Hundred Fifty Dollars (\$250) may be charged to the Purchaser for each mortgage obtained by the Purchaser if the Purchaser does not obtain a mortgage loan from a lender designated by Developer. Should the Purchaser obtain a mortgage loan from any out-of-state lender, a fee of Five Hundred Dollars (\$500) may be charged to the Purchaser for each mortgage obtained. If an escrow involves a 1031 exchange, Escrow has the right to assess additional fees commensurate with the amount of work involved. The cost of said escrow fees and title insurance policies shall be the expense of the individual Purchasers, and the same or any portion thereof shall not in any way be the obligation of the Developer.

SPECIAL NOTE: . THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE ESCROW AGREEMENT. WHILE ONE CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE AGREEMENT, ONE

MUST REFER TO THE ACTUAL AGREEMENT TO DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES. IF ANY CONFLICT OF DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE AGREEMENT, THE AGREEMENT WILL CONTROL AND NOT THIS SUMMARY.

**END OF EXHIBIT "H"**

EXHIBIT I

RECEIVED MAY 8 2009

COPY

BERNARD P. CARVALHO, JR.  
MAYOR



IAN K. COSTA  
DIRECTOR OF PLANNING

GARY K. HEU  
ADMINISTRATIVE ASSISTANT

IMAİKALANI P. AIU  
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUA'I  
PLANNING DEPARTMENT  
4444 RICE STREET  
KAPULE BUILDING, SUITE A473  
LIHU'E, KAUA'I, HAWAII 96766-1326

TEL (808) 241-4050 FAX (808) 241-6699

DATE: May 8, 2009

TO: Cynthia M.L. Yee, Esq.  
Senior Condominium Specialist  
Real Estate Commission - P & VLD/DCCA  
335 Merchant Street, Room 333  
Honolulu, Hawaii 96813

FROM: Ian K. Costa, Director of Planning 

SUBJECT: Certification of Inspection of Existing Buildings

Project Name: GEORGE A. FERN  
Condominium Project (586)  
Tax Map Key: (4) 4-6-004; 040

The attorney for the above-mentioned condominium project has requested that this office, as an agency of the County of Kauai, review the project for compliance with all ordinances, codes, rules, regulations and other requirements of the County of Kauai, Section 514 B-5 & B-6, Hawaii Revised Statutes, subject to the disclosures and waivers (item "5" below) specified herein, we certify the following:

1. The developer has contracted engineer Peter Taylor to certify that the buildings on the proposed project referred to as George A. Fern Condominium Unit 1 and Unit 2 are in compliance with all ordinances, codes, rules, regulations and other requirements in force at the time of its construction, and to that extent, and subject to the conditions of waiver herein, the Planning Department adopts that certification as it pertains to the rules and regulations administered solely by the Department.

Senior Condominium Specialist  
George A. Fern Condominium  
TMK: (4) 4-6-004: 040  
May 8, 2009  
Page two

2. There are no variances approved for the subject property.
3. The parcel does not contain any outstanding nonconforming uses or structures as a result of the adoption or amendments of any ordinances or codes and regulations.
4. There are no notices of violations of County building or zoning codes outstanding according to our records.
5. WAIVER  
The foregoing certification is not a warranty to any compliance with applicable County and State rules and regulations. The sole reason for the execution hereof is to comply with statutory requirements relating to the regulations of condominiums under subsection 514 B-84, (a), and (2), Hawaii Revised Statutes.

If you have any questions, please contact Sheilah Miyake at (808) 241- 4050.

cc: Gerorge & Cecelia Fern, Project Developers  
Helene Taylor, Attorney at Law

END OF EXHIBIT "I"

EXHIBIT "J"

**AMENDED  
ENGINEER'S CONDITION REPORT  
"GEORGE A. FERN CONDOMINIUM"  
TMK: (4) 4-6-04:Parcel 40 (Lot 42B)  
KAPA'A, DISTRICT OF KAWAIHAU, KAUA'I, HAWAII**

The undersigned, being a licensed engineer within the state of Hawai'i and bearing Registration No 2586, has inspected the buildings comprising the condominium project known as "George A. Fern Condominium", located at Kapa'a, District of Kawaihau, Kaua'i, Hawai'i, and identified by Tax Map Key No (4) 4-6-04:Parcel 40 (Lot 42B).

1. Without conducting invasive examinations of covered plumbing, electrical and structural components, the existing improvements on Unit 1 appear to be in sound condition.
2. No representations are made to the expected useful life of the improvements.
3. Unit 2: The existing CPR structure appears to be in sound condition. No representations are made regarding the expected useful life of the improvements.

This is not a warranty of compliance with all rules and regulations but is only a warranty that inspection was made. No right shall accrue to any third party for subsequent discovery of any problems.

*Peter N. Taylor*

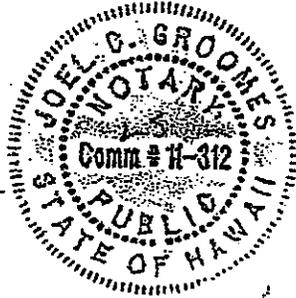
PETER NEIL TAYLOR  
Hawaii License No. 2586

STATE OF HAWAII )

) SS:

COUNTY OF KAUA'I )

On this 06 day of March, 2013, before me appeared Peter Taylor, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing Engineer's Certificate dated 06 March, 2013, which document consists of 1 page(s), as the free act and deed of such person, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



*Joel C. Groomes*

Name of Notary: Joel C. Groomes

Notary Public, Fifth Judicial Circuit, State of Hawaii

My commission expires: 16 October 2015

Commission No.: 11-312

**EXHIBIT "K"**

\*\*\*FOR ILLUSTRATION ONLY\*\*\*

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AFTER RECORDATION RETURN BY MAIL TO:  
COUNTY OF KAUAI  
Planning Department  
Building A, Suite 473  
4444 Rice Street  
Lihue, HI 96766

Document contains \_\_\_\_\_ pages

**FARM DWELLING AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, whose residence and post office address is \_\_\_\_\_,

\_\_\_\_\_ hereinafter called the "APPLICANT(S)", and the COUNTY OF KAUAI, Planning Department, its business and mailing address being 4444 Rice street, Building A, Suite 473, Lihue, Hawaii 96766, hereinafter called the "DEPARTMENT".

**WITNESSETH:**

WHEREAS, the APPLICANT(S) warrant and represent that he/she/they is/are the \_\_\_\_\_ of that certain parcel of land, Tax Map Key No. (4) \_\_\_\_\_ more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, this document pertains only to Unit(s) \_\_\_\_\_ as shown in Exhibit "B" and made a part hereof; and

WHEREAS, that certain parcel of land is classified Agriculture by the State Land Use Commission and is zoned Agriculture by the County of Kauai; and

WHEREAS, Chapter 205, Hawaii Revised Statutes, and the state Land Use District Regulations only permit "farm dwellings" within the State Agriculture Land Use District unless otherwise relieved from the restriction by a special permit obtained pursuant to Chapter 205, Section 6, Hawaii Revised Statutes; and

WHEREAS, a "farm dwelling" is defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations as "a single family dwelling located on and used in connection with a farm where agricultural activity provides income to the family occupying the dwelling"; and

WHEREAS, the parcel identified by Tax Map Key No. (4) \_\_\_\_\_, is entitled to \_\_\_\_\_ residential units (and one guest house); and

WHEREAS, this Agreement is evidenced that \_\_\_\_\_ is entitled to one of those residential units; and

WHEREAS, a "family" as used in the definition of "farm dwelling" is defined by the State Land Use District Regulations as "an individual or two or more persons related by blood, marriage or adoption or a group comprising not more than five persons, not related by blood, marriage or by adoption"; and

WHEREAS, the APPLICANT(S) acknowledge that a violation of Chapter 205, Hawaii Revised Statutes, and the state Land Use District restriction is subject to a citation and fine of not more than \$5,000 pursuant to Chapter 205, Section 13, Hawaii Revised Statutes, as amended; and

WHEREAS, the APPLICANT(S) also acknowledge that failure to abide by this Agreement may result in the removal of the prohibited structure at the owner's expense; and

WHEREAS, the DEPARTMENT is charged with the enforcement of the restriction by Chapter 205, Hawaii Revised Statutes; and

WHEREAS, the APPLICANT(S) wish to construct a dwelling unit on that certain parcel of land describe in Exhibit A; and

WHEREAS, the APPLICANT(S) wish to execute this Farm Dwelling Agreement without first obtaining the signatures of all interest holders in the CPR;

NOW, THEREFORE, for and in consideration of the terms, covenants and conditions hereinafter contained, the parties hereby mutually agree as follows:

1. That the dwelling permitted to be constructed on the parcel of land described in Exhibit "A" classified Agriculture by the State Land Use Commission shall be a "farm dwelling".

as defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District regulations, as recited herein; and

2. That the dwelling shall only be occupied by a "family", as defined by the State Land Use District regulations and as recited herein, who derive income from the agricultural activity on the parcel; and

3. That the APPLICANT(S) and all present and future owners, lessees and occupants of said land grant the DEPARTMENT the right of entry at the request of the DEPARTMENT to inspect the premises to assure compliance with the provisions of this Agreement; and

4. That this Agreement shall be a covenant running with the land and be binding on the APPLICANT(S), and all present and future owners, lessees and occupants of said land and anyone claiming under said APPLICANT(S), their heirs, executors, administrators, successors and assigns, as owners or occupants thereof or otherwise; and

5. That this Agreement shall remain in effect so long as the land retains its Agriculture District classification under the State Land Use Commission and the pertinent restrictive provisions of Chapter 205, Hawaii Revised Statutes, and the State Land Use District regulations remain in effect; and

6. That the APPLICANT(S) expressly set forth the provisions of this Agreement in any subsequent conveyance, deed, lease or rental agreement to said property executed by them, so as to give effect to said covenant; and

7. That this Agreement shall be recorded with the State of Hawaii Bureau of Conveyances, fees to be paid by the APPLICANT(S); and

8. The DEPARTMENT and APPLICANT(S) shall execute the Farm Dwelling Agreement; and

9. The APPLICANT(S), for themselves (himself, herself), their (his/her) heirs, administrators, successors and assigns, do hereby waive and release the DEPARTMENT and the County of Kauai, a political subdivision of the State of Hawaii, whose principle place of business is 4444 Rice Street, Suite 473, Lihue, Hawaii 96766, from all claims and causes of action, either legal or equitable, which may hereafter accrue by reason of the DEPARTMENT'S execution of said Farm Dwelling Agreement; and

10. The APPLICANT(S) do(es) hereby promise to indemnify and hold the DEPARTMENT and the County of Kauai, its successors, assigns, offices, employees, agents, attorneys or any other person or legal entity connected with or legally responsible to them, harmless from any and all claims, actions, causes of action, lawsuits, demands or liability for damages of whatever kind and nature, arising out of the DEPARTMENT'S execution of said Farm Dwelling Agreement; and

11. This agreement shall be a covenant running with the portion of land described in Exhibit "A," and shall be binding on APPLICANT(S) and all present and future owners and occupants of said portion of land and any one claiming under APPLICANT(S), their successors and assigns, as owners or occupants thereof. The APPLICANT(S) further agree(s) to expressly set forth the provisions of this waiver and indemnity agreement in any subsequent conveyance, deed, lease, or rental agreement so as to give effect to said covenant.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

APPROVED:

APPLICANT(S)

\_\_\_\_\_  
Planning Director

\_\_\_\_\_  
\_\_\_\_\_

APPROVED AS TO FORM AND  
LEGALITY:

\_\_\_\_\_  
County Attorney

STATE OF HAWAII     )  
                                  ) SS:  
COUNTY OF KAUAI    )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii

Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

STATE OF HAWAII )  
 ) SS:  
COUNTY OF KAUAI )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me personally appeared \_\_\_\_\_, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF HAWAII )  
 ) SS:  
COUNTY OF KAUAI )

On this day of \_\_\_\_\_, 20\_\_\_, before me appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, did say that (s)he is the \_\_\_\_\_ of the PLANNING DEPARTMENT of the COUNTY OF KAUAI; and that said instrument was executed on behalf of said PLANNING DEPARTMENT; and that said \_\_\_\_\_ acknowledged that (s)he executed the same as his/her free act and deed of the PLANNING DEPARTMENT of the COUNTY OF KAUAI. Said Department has no seal.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

EXHIBIT "L" hly



STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

October 27, 2014 8:02 AM

Doc No(s) A-54130380



for NICKI ANN THOMPSON  
REGISTRAR

1 2/2 KEO Conveyance Tax: \$1.00  
B-32533619

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL (x)

PICK-UP ( )

Helene L. Taylor  
18 Amicita Avenue  
Mill Valley, California 94941

Total Pages: 12

TITLE OF DOCUMENT:

QUITCLAIM APARTMENT DEED

PARTIES TO DOCUMENT:

GRANTOR: CECELIA FERN and GEORGE R. FERN, Co-Trustees of The  
Cecelia Fern Trust, dated February 17, 1994, as amended,  
and The George R. Fern Trust, dated February 17, 1994, as  
amended

GRANTEE: CECELIA FERN Trustee of The Cecelia Fern Trust, dated  
February 17, 1994, as amended and restated on March 14, 2014

PROPERTY DESCRIPTION:

TAX KEY: (4) 4-6-04-40 CPR NOS. 1 & 2 UNIT NOS. 1 & 2

QUITCLAIM APARTMENT DEED

KNOW ALL MEN BY THESE PRESENTS:

THIS INDENTURE, made this 18<sup>th</sup> day of July, 2014; by and between CECELIA FERN and GEORGE R. FERN, Co-Trustees of the Cecelia Fern Trust, dated February 17, 1994, as amended, hereinafter called the "Grantor", and CECELIA FERN, Trustee of the Cecelia Fern Trust, dated February 17, 1994, as amended and restated on March 14, 2014, whose mailing address is 7206 Kahuna Road, Unit B, Kapaa 96746-9027, hereinafter called the "Grantee",

WITNESSETH:

The Grantor, in consideration of the sum of TEN DOLLARS (\$10.00) and other valuable consideration in hand paid by Grantee, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto Grantee, in fee simple, all of those certain premises described in Exhibits "A" and "B", attached hereto and made part hereof.

TO HAVE AND TO HOLD the same unto the Grantee, in fee simple, subject to the Declaration and By-Laws referred to in exhibits "A" and "B", and the covenants, conditions and restrictions in said Declaration and in said By-Laws contained, all of which are incorporated herein by reference and made a part hereof.

The Grantee does hereby covenant and agree, for the benefit of the owners from time to time of all other condominium units in the aforesaid condominium project to at all times observe and perform all of the terms, covenants, conditions and restrictions set forth in said Declaration and in said By-Laws, as the same may from time to time be amended, on the Grantee's part to be observed and performed as and when required to do so, and will indemnify and hold and save harmless them and each of them from any

failure so to observe and perform any of such terms, covenants, conditions and restrictions.

The conveyance herein set forth and the warranties of the Grantor concerning the same are expressly declared to be in favor of the Grantee, and Grantee's successors in trust and assigns.

The terms "Grantor" or "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands as of  
the day and year first above written.

GRANTOR:

Cecelia Fern  
CECELIA FERN, as Co-Trustee of The  
Cecelia Fern Trust, dated February 17,  
1994, as amended

George R Fern  
GEORGE R FERN, as Co-Trustee of The  
Cecelia Fern Trust, dated February 17,  
1994, as amended

GRANTEE:

Cecelia Fern  
CECELIA FERN, Trustee of The Cecelia  
Fern Trust, dated February 17, 1994, as  
amended and Restated March 14, 2014

STATE OF HAWAII )  
 ) HB.  
COUNTY OF KAUAI )

I the undersigned notary public commissioned in the State of Hawaii, hereby certify the following:

On this 18<sup>th</sup> day of July, 2014, before me personally appeared CECELIA FERN, as Co-Trustee of The Cecelia Fern Trust, dated February 17, 1994, as amended, Co-Trustee of the George R. Fern Trust, dated February 17, 1994, as amended, and Trustee of the Cecelia Fern Trust dated February 17, 1994, as amended and restated on March 14, 2014, who, being by me duly sworn or affirmed, did say that she executed the foregoing instrument identified or described as Quitclaim Apartment Deed, as her free act and deed, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

The foregoing instrument is dated July 18, 2014, and contains 12 pages at the time of this acknowledgment/certification.

Wanda E. Fujimoto

Name: WANDA E. FUJIMOTO  
Notary Public, Fifth Judicial Circuit, State  
of Hawaii

My commission expires: 6-14-2016

WS

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. 100 year building setback lines as shown on the subdivision map.
2. Seven feet road setback line.
3. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

Declaration of Condominium Property Regime of the George A. Fern Condominium dated November 12, 2008 and recorded in said Bureau as Document No. 2009-011644.

First Amendment to Declaration of Condominium Property Regime of the George A. Fern Condominium dated March 1, 2010 and recorded in said Bureau as Document No. 2010-027346.

Bylaws of the George A. Fern Condominium dated November 12, 2008 and recorded in said Bureau as Document No. 2009-011645.

Condominium Map No. 4766, recorded in said Bureau.

END OF EXHIBIT "L"

4. 351' 44' 00" 173.00 feet along Lot 42-A to the point of beginning and containing an area of 0.80 acre.

-SECOND:-

An undivided 50% interest in the land hereinafter described, and in all of the other common elements of said Condominium Project, as declared and established by said Declaration, as amended.

THE LAND UPON WHICH SAID CONDOMINIUM PROJECT IS SITUATE IS DESCRIBED AS FOLLOWS:

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 7720 to Shinita Fugita) situate, lying and being at Kapaa, Kawaihau, Island and County of Kauai, State of Hawaii, being LOT 42-B, same being a portion of Lot 42 of the "KAPAA HOMESTEADS (1<sup>ST</sup> SERIES)", and thus bounded and described:

Beginning at a pipe at the southeast corner of this lot being also the southwest corner of Lot 42-A located on the north right-of-way line of Kahuna Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PILIAMOO" being 1,421.53 feet south and 3,186.38 feet west and running by azimuths measured clockwise from true South:

1. 75' 20' 30" 256.75 feet along the North right-of-way of Kahuna Road;
2. Thence along the North right-of-way line of Kahuna Road on a curve to the right having a radius of 285.00, the chord azimuth and distance being:  
83' 00' 37" 76.06 feet;
3. 174' 56' 00" 706.76 feet along Lot 42-C;
4. 258' 38' 00" 292.17 feet along Lot 42-C;
5. 351' 44' 00" 694.57 feet along Lot 42-A to the point of beginning and containing an area of 5.03 acres, more or less.

EXHIBIT "B"

-FIRST:-

Condominium Unit No. 2 of the Condominium Project known as "GEORGE A. FERN CONDOMINIUM", as established by Declaration of Condominium Property Regime dated November 12, 2008, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2009-011644, and as shown on Condominium Map No. 4766 and any amendments thereto.

Together with exclusive use of the limited common elements appurtenant thereto, and appurtenant easements as described in said Declaration and nonexclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for, and support, maintenance and repair of said Unit which are shown on the Condominium Map for the Project or otherwise of record; in the other common elements for use according to their respective purposes, and in all other Units of said Project.

The limited common elements of Unit 2 is described as follows:

UNIT 2  
"GEORGE A. FERN CONDOMINIUM"  
Portion of Lot 42-B,  
Being a Portion of Lot 42 Kapaa Homesteads (1<sup>st</sup> Series)  
Portion of Grant No. 7720 to Shiniti Fugita  
Kapaa, District of Kawaihau, Kauai, Hawaii

Beginning at the Southeast corner of this Unit 2, being also the Southeast corner of Lot 42-B located on the North right-of-way line of Kahuna Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Piliamoo" being 1,421.53 feet South and 3,186.38 feet West thence running by azimuths measured clockwise from true South:

1. 75° 20' 30" 186.18 feet along the North right-of-way line of Kahuna Road;
2. 164° 15' 22" 179.28 feet along Unit 1;
3. 257° 20' 59" 208.96 feet along Unit 1;