

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

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OUR REFERENCE NO.:
070362-1

March 12, 2020

VIA E-MAIL TO BLNR.TESTIMONY@HAWAII.GOV

Suzanne D. Case
Chairperson
Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street, Room 131
Honolulu, Hawaii 96813

Re: Conservation District Enforcement HA 20-17 (Arai & Lusher) Agenda Item K-1,
BLNR Meeting March 13, 2020, 87-3173 Mapuna Road, South Kona, Hawaii,
Tax Map Key No.: (3) 8-7-019:031

Dear Chairperson Case and Members of the Board of Land and Natural Resources,

We represent Mr. Christopher Arai and Ms. Tess Marie Lusher in connection with the above-referenced matter that will come before the Board of Land and Natural Resources ("BLNR") at its regular meeting on March 13, 2020. We appreciate the BLNR's and Office of Conservation and Coastal Lands' ("OCCL") agreement to withdraw Item K-3 from BLNR's February 14, 2020 meeting to allow Mr. Arai and Ms. Lusher the time needed to wait for its title insurers to respond to the tender of claims. Mr. Arai and Ms. Lusher have since received responses from their title insurers and are able to proceed with the matter before the BLNR.

As briefly discussed at the February 14, 2020 BLNR meeting, Mr. Arai and Ms. Lusher purchased the subject property in 2006 without knowledge of the Conservation District Use Application HA-2730 ("CDUP") and the CDUP conditions. The property was conveyed to Mr. Arai and Ms. Lusher by Warranty Deed, attached hereto for your reference as Enclosure 1. Mr. Arai and Ms. Lusher also obtained a title policy, attached hereto as Enclosure 2. After the February 14, 2020 hearing, Mr. Arai and Ms. Lusher became aware that a Declaration of Restrictive Covenants (the "**Declaration**") was in fact recorded against the property in connection with the CDUP. See attached Enclosure 3. You will note that neither the Warranty Deed nor the title policy noted the Declaration as an encumbrance on the property. For this reason, Mr. Arai and Ms. Lusher have tendered their claims to the title insurer.

On March 2, 2020, counsel for Mr. Arai and Ms. Lusher sent a letter to OCCL requesting the deletion of the proposed fine of \$5,000.00 for attempting to register the property as a transient rental from the Staff Recommendation. To date, OCCL has not responded to that request.

Mr. Arai and Ms. Lusher are willing to accept responsibility for the \$15,000.00 fine and \$2,000.00 administrative fees (totaling \$17,000.00) for using the single-family home on the property as a transient rental in violation of the CDUP and Conservation District Rules. However, it does not appear that OCCL or BLNR have the authority to impose a fine in connection with an individual's attempt to file the County of Hawai'i Short-Term Vacation Rental and/or Nonconforming Use Application (the "NUC"). The County of Hawai'i had a strict deadline in which the NUC had to be filed in 2019 in order to preserve the right to continue to operate the property as a transient rental in the County of Hawai'i. Mr. Arai and Ms. Lusher, having only recently been informed by OCCL that a use which they thought was permitted on the property was in fact not allowed, and not fully understanding the impacts of such information, filed the NUC intending only to preserve their rights under the new County of Hawaii ordinance restricting transient rentals, while attempting to research the District Boundary Amendment process which they thought would then allow them to continue the transient rental of the property.

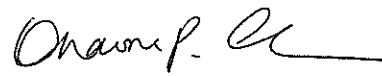
Hawai'i Administrative Rules ("HAR") § 13-5-42, Hawai'i Revised Statutes ("HRS") § 183-7, and the Declaration do not prohibit individuals from filing a NUC or allow BLNR or OCCL to impose fines for the mere filing of the County NUC. Accordingly, Mr. Arai and Ms. Lusher respectfully request that the proposed \$5,000.00 fine for attempting to file the NUC not be imposed by the BLNR.

The fines that are being imposed on Mr. Arai and Ms. Lusher are significant, even without the proposed \$5,000.00 fine for filing the County NUC. Mr. Arai and Ms. Lusher are willing to pay the remaining fines totaling \$17,000.00 which are more than enough to penalize them for the past use of the property as a transient rental and to prevent them from doing it again in the future. Mr. Arai and Ms. Lusher are no longer renting the property as a transient rental, or otherwise renting the property, and have removed all advertising of the property that they are aware of. Mr. Arai and Ms. Lusher have also prepared a brief statement for your consideration, which is attached hereto as Enclosure 4.

Thank you for your attention to this matter.

Chairperson Suzanne D. Case
March 12, 2020
Page 3

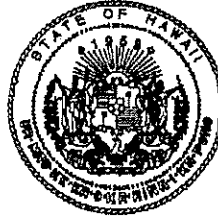
Sincerely,

A handwritten signature in black ink, appearing to read "Katherine A. Garson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Katherine A. Garson
Onaona P. Thoene

Enclosures

4851-9690-3607.2.070362-00001



R-451

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
FEB 17, 2006 08:01 AM

Doc No(s) 2006-032892



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

CTax (20): \$1750.00

20 1/1 Z12

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL PICK UP

①RS

MR & MRS CHRISTOPHER ARAI
425 TUCKER STREET
HEALDSBERG, CA 95448

TG: 200600341A
TGE: A6-301-0007
Marlene Elisaga

THIS DOCUMENT CONTAINS 11 PAGES

AFFECTS TAX MAP KEY: (3) 8-7-019-031

WARRANTY DEED

SELLERS: RALPH U. FUKUMITSU, Trustee under that certain unrecorded Revocable Trust of Ralph U. Fukumitsu dated April 21, 1983, as amended, a Memorandum of which was recorded as Document No. 93-092594, with full powers to sell, mortgage, lease or otherwise deal with the land, and GLADYS E. FUKUMITSU, Trustee under that certain unrecorded Revocable Trust of Gladys E. Fukumitsu dated April 21, 1983, as amended, a Memorandum of which was recorded as Document No. 93-092595, with full powers to sell, mortgage, lease or otherwise deal with the land, as Tenants in Common in equal shares, as Fee Owner, whose residence and mailing address is 73-1400 Hikimoe Street, Kailua-Kona, HI 96740

BUYERS: CHRISTOPHER ARAI and TESS MARIE LUSHER, Husband and Wife, whose residence and mailing address is 425 Tucker Street, Healdsburg, CA, 95448

DESCRIPTION OF PROPERTY:

The property covered by this Warranty Deed is / described in Exhibit "A" attached to this document.

SALE, TRANSFER AND CONVEYANCE OF PROPERTY:

In return for the Buyer's payment of the purchase price as agreed between Seller and Buyer, the Seller sells, transfers and conveys the property described in Exhibit "A" to the Buyer.

SALE, TRANSFER AND CONVEYANCE OF OTHER RIGHTS:

Seller also sells, transfers and conveys to the Buyer the following:

- (A) All improvements, if any, located on the property;
- (B) All rights the Seller has in other property because of the Seller's ownership of the property being sold (these rights are known as "easements and appurtenances");
- (C) All rents or royalties from the property;
- (D) Any mineral and metallic rights owned by the Seller in the property, if any; and
- (E) All other rights, interests or privileges that the Seller owns because of the Seller's ownership of the property.

BUYER'S TENANCY:

The Buyer will take and own the property as / Tenants in Entirety. The Buyer will also own the other rights described above in the same tenancy.

SELLER'S WARRANTIES:

By signing this Warranty Deed, Seller gives Buyer a general warranty of title. This means that Seller guarantees:

(A) That the Seller lawfully owns the property and other rights being sold to Buyer;

(B) That the Seller has the right to sell, transfer and convey the property and other rights described in Exhibit "A" and this Deed;

(C) That there are no other claims by any person against the property or the other rights being sold and no other person has any rights in the property unless those claims or rights are described in Exhibit "A" under the title "SUBJECT TO"; and

(D) That if any other person makes any lawful claim against the property or the other rights being sold, or has any rights in the property, and those claims or rights are not described in Exhibit "A," then the Seller will defend the Buyer's ownership against those lawful claims and rights. The Seller does not have any obligation to defend the Buyer's ownership against any claims or rights described in Exhibit "A".

1031 EXCHANGE:

This Deed is part of an Internal Revenue Code Section 1031 tax deferred exchange by the (Buyer/Seller) herein.

DEFINITIONS:

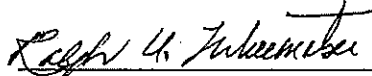
The word "person" includes natural persons, business organizations and any other entity the law allows to own property or conduct business;

The word "Seller" and "Buyer" include the persons named in this deed and those who take over

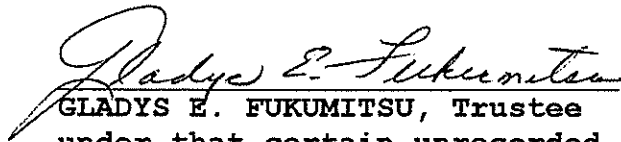
or succeed to that person's rights or interests, whether by purchase, inheritance, operation of law or otherwise.

DATE:

This Deed is being signed by the Sellers on the 13th day of February, 2006.



RALPH U. FUKUMITSU, Trustee
under that certain unrecorded
Revocable Trust of Ralph U.
Fukumitsu dated April 21,
1983, as amended



GLADYS E. FUKUMITSU, Trustee
under that certain unrecorded
Revocable Trust of Gladys E.
Fukumitsu dated April 21,
1983, as amended

SELLERS

DATE:

This Deed is being signed by the Buyers on the _____ day of _____, 20____.

CHRISTOPHER ARAI

TESS MARIE LUSHER

BUYERS

or succeed to that person's rights or interests, whether by purchase, inheritance, operation of law or otherwise.

DATE:

This Deed is being signed by the Sellers on the 10th day of February, 2006.

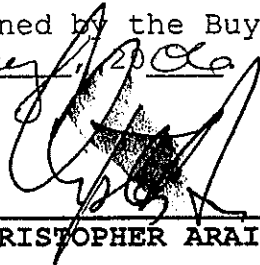
RALPH U. FUKUMITSU, Trustee
under that certain unrecorded
Revocable Trust of Ralph U.
Fukumitsu dated April 21,
1983, as amended

GLADYS E. FUKUMITSU, Trustee
under that certain unrecorded
Revocable Trust of Gladys E.
Fukumitsu dated April 21,
1983, as amended

SELLERS

DATE:

This Deed is being signed by the Buyers on the 10th day of February, 2006.



CHRISTOPHER ARAI

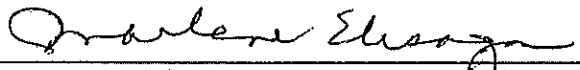


TESS MARIE LUSHER

BUYERS

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 13th day of February 2006, before me personally appeared **RALPH U. FUKUMITSU**, **Trustee under that certain unrecorded Revocable Trust of Ralph U. Fukumitsu dated April 21, 1983, as amended**, with full powers to sell, mortgage, lease or otherwise deal with the land, to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed as Trustees.



Notary Public, State of Hawaii

My Commission expires: _____

Marlene Elisaga
Expiration Date: August 1, 2009

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 13th day of February 2006, before me personally appeared **GLADYS E. FUKUMITSU**, **Trustee under that certain unrecorded Revocable Trust of Gladys E. Fukumitsu dated April 21, 1983, as amended**, with full powers to sell, mortgage, lease or otherwise deal with the land, to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged to me that she executed the same as her free act and deed as Trustees.



Notary Public, State of Hawaii

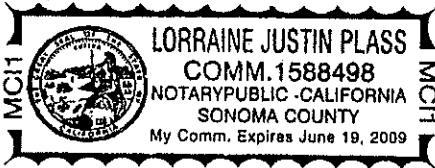
My Commission expires: _____

Marlene Elisaga
Expiration Date: August 1, 2009

California
STATE OF ~~HAWAII~~)
)
~~COUNTY OF HAWAII~~)

SS.

On this 10th day of February 2006, before me personally appeared **CHRISTOPHER ARAI**, to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed as Trustees.



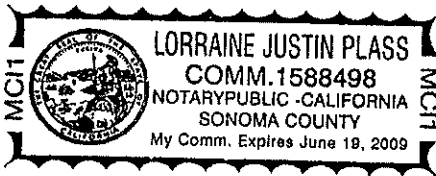
Lorraine Justin Plass
Notary Public, State of Hawaii
Lorraine Justin Plass

My Commission expires: 6-19-06

California
STATE OF ~~HAWAII~~)
)
~~COUNTY OF HAWAII~~)

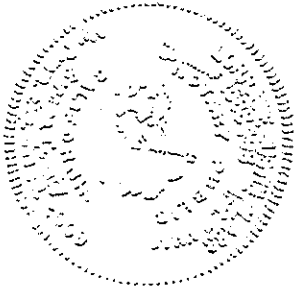
SS.

On this 10 day of February 2006, before me personally appeared **TESS MARIE LUSHER**, to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged to me that she executed the same as her free act and deed as Trustees.



Lorraine Justin Plass
Notary Public, State of Hawaii
Lorraine Justin Plass

My Commission expires: 6-19-06



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

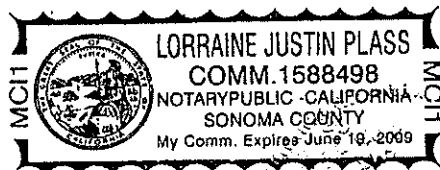
State of: California } ss.
County of Sonoma

On Feb 10, 2006 before me, Lorraine Justin Plass, Notary for above mentioned State, personally appeared Christopher Arco & Tess Marie Lush
Name of Signer(s)

personally known to me proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official and seal.

Lorraine Justin Plass
Lorraine Justin Plass



OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

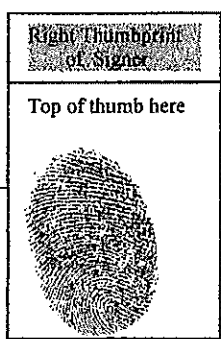
Description of Attached Document

Title and of Type of Document: Warranty Deed x 3
Document Date: 2/10/06 Number of Pages: 305 Including this document. 3 sets of 10
Identification: CA Driver's License #: 1024670 Date of Issue 5.30.03
Date Of Expiration: 10.11.07 Height: 5'7" Weight: 120 Hair/Eye Color: Brown

Capacity(ies) Claimed by Signer

Signer's Name: Chris Arco & Tess Lush

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer is Representing: Selves on Warranty Deed

EXHIBIT "A"

-PARCEL FIRST-

All of that certain parcel of land (being portion(s) of the land (s) described in and covered by Mahele Award No. 25, Royal Patent Number 7739 to Nahua) situate, lying and being at Kaohe 4th, District of South Kona, Island and County of Hawaii, State of Hawaii, being LOT 330 of "KONA PARADISE SUBDIVISION", and thus bounded and described:

Beginning at the southeast corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAIKAKUU 4" being 1,645.28 feet north and 4,045.13 feet west and running by azimuths measured clockwise from true South:

1. 90° 00' 180.37 feet along Lot 331;
2. 166° 46' 40" 61.63 feet along Kaohe Park reserve;
3. 270° 00' 194.47 feet along Lot 329;
4. 360° 00' 60.00 feet along 40-foot wide roadway to the point of beginning and containing an area of 11,245 square feet, more or less.

-PARCEL SECOND-

An undivided 1/600th interest in common with others for ingress and egress in, over and across those certain roadways running through the subdivision, said roadways contained in DEED dated November 15, 1971, recorded in Liber 7992 at Page 314.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : F G R ENTERPRISE, a Hawaii limited partnership

GRANTEE : RALPH U. FUKUMITSU, Trustee under that certain unrecorded Revocable Trust of Ralph U. Fukumitsu dated April 21, 1983, as amended, a Memorandum of which was recorded as Document No. 93-092594, with

full powers to sell, mortgage, lease or otherwise deal with the land, and GLADYS E. FUKUMITSU, Trustee under that certain unrecorded Revocable Trust of Gladys E. Fukumitsu dated April 21, 1983, as amended, a Memorandum of which was recorded as Document No. 93-092595, with full powers to sell, mortgage, lease or otherwise deal with the land

DATED : December 20, 2004
RECORDED : Document No. 2004-260915

Subject however to the following:

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

INSTRUMENT : DECLARATION
DATED : February 5, 1975
RECORDED : Liber 10448 Page 283

Said Declaration was amended by instrument dated March 25, 1995, recorded as Document No. 95-083374.

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

INSTRUMENT : DECLARATION AFFECTING KONA
PARADISE SUBDIVISION
DATED : March 20, 1978
RECORDED : Liber 12792 Page 52

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

INSTRUMENT : BY-LAWS OF THE KONA PARADISE
PROPERTY OWNERS ASSOCIATION

DATED : --- (acknowledged January 29,
1999)
RECORDED : Document No. 99-022824

4. -AS TO PARCEL SECOND-

Rights of others who may own undivided
interest(s), or have easement or access rights, in
said parcel.

END OF EXHIBIT "A"

Policy of Title Insurance

**Hawaii Standard
Owner's Policy
(1998)**

**SUBJECT TO THE EXCLUSIONS FROM
COVERAGE, THE EXCEPTIONS FROM
COVERAGE CONTAINED IN SCHEDULE B
AND THE CONDITIONS AND STIPULA-
TIONS, TICOR TITLE INSURANCE COM-
PANY, a California corporation, herein called
the Company, insures, as of Date of Policy
shown in Schedule A, against loss or damage,
not exceeding the amount of insurance stated
in Schedule A, sustained or incurred by the
insured by reason of:**

2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.


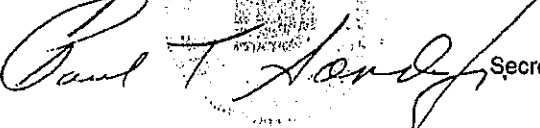
1. Title to the estate or interest described in Schedule A being vested other than as stated therein;

This policy shall not be valid or binding until countersigned below by an authorized signatory of the Company.

COPY

TICOR TITLE INSURANCE COMPANY

Countersigned at Honolulu,
Hawaii, by Title Guaranty
of Hawaii, Incorporated
P.O. Box 3084
Honolulu, Hawaii 96802

By  President
Attest  Secretary

Authorized Signatory



Exclusions from Coverage

The following matters are expressly excluded from the coverage of this Policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant or any agent of the insured claimant and not disclosed in writing to the Company by the insured prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.
5. Taxes, assessments or obligations levied or created for any public purpose or improvement, unless the amount thereof has been fixed, is payable and is shown as a lien in the public records at Date of Policy.
6. Any facts, rights, interest or claims which are not recorded in the public records at Date of Policy but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof or of the lessors in any lease of the land.
7. Easements or claims of easements which are not recorded in the public records at Date of Policy.
8. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey or archaeological study would disclose.
9. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
10. Rights or claims of persons or entities other than the insured involving or arising out of: mineral or metallic mines; geothermal resources; water; fishing, commerce or navigation; creation or loss of the land or any portion thereof by accretion, avulsion, erosion or artificial means; persons residing on or otherwise in possession of the land or any portion thereof; trails, roadways or other rights of way, including without limitation any such rights or claims under Chapter 264, Hawaii Revised Statutes.
11. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land, whether furnished before or after Date of Policy and regardless of the legal effective date of any such lien or claim, unless at the Date of Policy such lien or claim was recorded in the public records or filed in the Circuit Court pursuant to Chapter 507, Hawaii Revised Statutes.
12. Any claim arising as a result of the inability or failure of the insured to comply with applicable doing business laws of the State of Hawaii.

Conditions and Stipulations

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, or in Schedule C if not provided for in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in the applicable Schedule, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions from Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants or warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is

adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS: DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves that right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company

to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS: TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment in the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle with Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the amount of insurance stated in Schedule A; or

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the amount of insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPORTIONMENT

If the land described in the applicable Schedule consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

11. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. PAYMENT OF LOSS

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. SUBROGATION UPON PAYMENT OR SETTLEMENT

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights

and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-Insured Obligor.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitations, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

14. ARBITRATION

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000, shall be arbitrated only when agreed to by both the Company and the insured; Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

16. SEVERABILITY

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision, all other provisions shall remain in full force and effect.

17. NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at Tigor Title Insurance Company, Claims Department, P.O. Box 2233, Los Angeles, California 90051.



SCHEDULE A

Premium: \$2,727.00
Amount of Insurance: \$875,000.00
Date of Policy: February 17, 2006 at 8:01 a.m.
Policy No.: T74-000058187
Agent's No.: 200600341

Hawaii Standard Owner's Policy (1998)

1. Name of Insured:

CHRISTOPHER ARAI and TESS MARIE LUSHER, husband and wife, as
Tenants by the Entirety, as Fee Owner

2. Title to the estate or interest in the land is vested in:

THE NAMED INSURED

3. The estate or interest in the land which is covered by this
policy is:

FEE SIMPLE

4. The land referred to in this policy is described as follows:

See Schedule C.

SCHEDULE B

All matters set forth in the paragraphs below the caption "Exclusions from Coverage" on the inside cover of this Policy and the following matters are expressly excluded from the coverage of this Policy and the Company will not pay loss or damage, costs, attorney's fees or expenses which arise by reason thereof.

1. Real Property Taxes, Second Installment, Fiscal Year July 1, 2005 - June 30, 2006.

Payable on or before February 20, 2006.

Tax Key: (3) 8-7-019-031 Area Assessed: 11,245 sq. ft.

Land Classification: CONSERVATION

Street Address: 87-3173 MAPUNA ROAD, CAPTAIN COOK, HAWAII 96740

2. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance.

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

INSTRUMENT : DECLARATION

DATED : February 5, 1975

RECORDED : Liber 10448 Page 283

Said Declaration was amended by instrument dated March 25, 1995, recorded as Document No. 95-083374.

SCHEDULE B CONTINUED

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

INSTRUMENT : DECLARATION AFFECTING KONA PARADISE SUBDIVISION

DATED : March 20, 1978

RECORDED : Liber 12792 Page 52

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

INSTRUMENT : BY-LAWS OF THE KONA PARADISE PROPERTY OWNERS
ASSOCIATION

DATED : --- (acknowledged January 29, 1999)

RECORDED : Document No. 99-022824

6. -AS TO PARCEL SECOND:-

Rights of others who may own, along with the insured, undivided interest(s), or have easement or access rights, in said parcel.

END OF SCHEDULE B

SCHEDULE C

The land referred to in this policy is described as follows:

-PARCEL FIRST:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Mahele Award No. 25, Royal Patent Number 7739 to Nahua) situate, lying and being at Kaohe 4th, District of South Kona, Island and County of Hawaii, State of Hawaii, being LOT 330 of "KONA PARADISE SUBDIVISION", and thus bounded and described:

Beginning at the southeast corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey triangulation Station "WAIKAKUU 4" being 1,645.28 feet north and 4,045.13 feet west and running by azimuths measured clockwise from true South:

- | | | | |
|----|--------------|--------|---|
| 1. | 90° 00' | 180.37 | feet along Lot 331; |
| 2. | 166° 46' 40" | 61.63 | feet along Kaohe Park reserve; |
| 3. | 270° 00' | 194.47 | feet along Lot 329; |
| 4. | 360° 00' | 60.00 | feet along 40-foot wide roadway to the point of beginning and containing an area of 11,245 square feet, more or less. |

-PARCEL SECOND:-

An undivided 1/600th interest in common with others for ingress and egress in, over and across those certain roadways running through the subdivision, said roadways contained in DEED dated November 15, 1971, recorded in Liber 7992 at Page 314.

SCHEDULE C CONTINUED

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : RALPH U. FUKUMITSU, Trustee under that certain unrecorded Revocable Trust of Ralph U. Fukumitsu dated April 21, 1983, a Memorandum of which was recorded as Document No. 93-092594, and GLADYS E. FUKUMITSU, Trustee under that certain unrecorded Revocable Trust of Gladys E. Fukumitsu dated April 21, 1983, a Memorandum of which was recorded as Document No. 93-092595

GRANTEE : CHRISTOPHER ARAI and TESS MARIE LUSHER, husband and wife, as Tenants by the Entirety

DATED : February 13, 2006

RECORDED : Document No. 2006-032892

END OF SCHEDULE C

GENERAL NOTES

1. There is hereby omitted from any covenants, conditions and reservations contained herein any covenant or restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law. Lawful restrictions under state or federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

R-464

: STATE OF HAWAII
: BUREAU OF CONVEYANCES
: RECORDED
: SEP 18. 1995 10:20 AM
: Doc No(s) 95-119773
: /s/ CARL T. WATANABE
: ACTING
: REGISTRAR OF CONVEYANCES/

AFTER RECORDATION, RETURN BY MAIL (X) PICK UP ()

RALPH U. FUKUMITSU
73-1400 Hikimoe Street
Kailua-Kona, Hawaii 96740

AFFECTS TAX MAP KEY: (3) 8-7-19:31

DECLARATION OF RESTRICTIVE COVENANTS

WHEREAS, RALPH U. FUKUMITSU and GLADYS E. FUKUMITSU, husband and wife, hereinafter referred to as "Owners," whose residence address is 73-1400 Hikimoe Street, Kailua-Kona, Hawaii 96740, of that certain parcel of land designated as Lot 330, being more specifically identified by Third Division, Tax Map Key No. 8-7-19:31, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 8853, Page 220;

WHEREAS, said land has been zoned by the State of Hawaii within the Conservation Zone, Limited Subzone, and as such is subject to the statutes, rules and regulations of the State of Hawaii, as administered by its Department of Land and Natural Resources (DLNR); and

WHEREAS, by approval dated December 23, 1994, DLNR has granted the Owners permission to construct a single family residence on said land, subject to certain restrictive covenants, which are attached hereto and incorporated herein as Exhibit "A," which are to be declared and recorded as Restrictive Covenants running with said land;

NOW THEREFORE, the Owners declare that said land shall be subject to the Restrictive Covenants contained in Exhibit "A," that said covenant shall run with the land and shall be binding upon the Owners, their heirs, executors, administrators, assigns, successors and grantees, for as long as said land shall be subject to the Conservation Zoning of the State of Hawaii, and the breach of any covenant may be enjoined, abated or remedied by appropriate proceedings by the State of Hawaii.

IN WITNESS WHEREOF, the Owners have executed this instrument on this 5TH day of August, 1995.


RALPH U. FUKUMITSU


GLADYS E. FUKUMITSU

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 5TH day of August, 1995, before me personally appeared RALPH U. FUKUMITSU and GLADYS E. FUKUMITSU, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Glean A. Mujeta
Notary Public, State of Hawaii
My commission expires: 12/97

EXHIBIT "A"

RESTRICTIVE COVENANTS
FOR TAX MAP KEY NO. (3) 8-7-19:31
KAHOE 4TH, SOUTH KONA, HAWAII

1. The application shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, Administrative Rules, as amended;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health Administrative Rules;
4. The single family dwelling shall not be used for rental or any other commercial purposes;
5. The applicant shall provide documentation (i.e. book/page or document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
6. Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not infer approval required of other agencies. Compliance with Condition 1 remain the responsibility of the applicant;
7. Any work or construction to be done on the land shall be initiated within one (1) year of the approval of such use, and all work and construction must be completed within three (3) years of the approval of such use;
8. That precautionary measures shall be taken to prevent excessive erosion, chemical products, debris, or other contaminants associated with construction activities from entering the ocean;
9. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;

10. That in issuing this permit, the Department and Board has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole part, and/or the Department may, in addition, institute appropriate legal proceedings;
11. That all representations relative to mitigation set forth in the accepted application for this proposed use are hereby incorporated as conditions of this approval;
12. That failure to comply with any of these conditions shall render this Conservation District Use Application null and void; and
13. Other terms and conditions as prescribed by the Chairperson.

END OF EXHIBIT "A"

Personal Statement of Christopher Arai

I would like to apologize for not attending the meeting of the BLNR. I had attended the meeting on 2/14/20, but due to the fact that we had not heard from the title company we asked for the Board to withdraw the agenda item. I have decided not to attend today's meeting due to the COVID19 pandemic and I hope that the Board will understand.

We purchased the beach house with the proceeds of my parents' house, so in a sense this is their legacy to me and grandchildren they never met. At the time that we purchased the beach house I was building a house for our family in Healdsburg, California. Unfortunately it took much longer than I expected so my children are more attached to the beach house than any place they have ever lived. We had planned to divide our time between the beach house and California when we get older. My wife is a psychiatrist and has considered practicing part time on the island of Hawaii. We love the house and much of our time when visiting is spent working on the upkeep and gardening. We were renting it out to help with the cost of ownership. I told my wife at the time we bought it that it was a risky place to put our money: sea level rising, earthquakes and a lava flow not much older than I am little more than a stone's throw away. Little did I know that along with those risks the means to keep it were going to be pulled out from under us. When we were informed that we could not rent it I told my wife we would have to sell. My wife and kids were so upset that I had to yield to the majority so we will try to hang on to it. How we will do that remains to be seen.

I'm sad for the neighborhood. None of the houses on Mapuna Road are occupied by owners and only one has a long term rental. The two houses immediately to the north of us are rarely used and in decline and I hear that two other neighbors will be selling. Being oceanfront properties they will be priced out of reach for working families, so they will likely sit mostly empty and unavailable to anyone. At least while we rented it our guests really appreciated the opportunity to visit the island in such a special place. The neighborhood is a quiet residential area and attracted guests who were quiet and created less traffic than a resident would. They participated in the local economy and left with a good feeling about the island. I really do appreciate what the DLNR and OCCL are doing to protect the resources of the state of Hawaii, but I strongly believe that the restrictive laws regarding STVRs have neither improved nor protected anything in our particular neighborhood.

When we purchased the property we were not made aware of the restrictions to short term renting. Had we been informed of CDUP HA-2730 we would not have purchased the property.

In late August of 2019 I attempted to submit my STVR/NUC application in person and was told I needed to contact the OCCL. I contacted the OCCL and was told that I was in violation of the law. This was extremely shocking news. It destroyed our vision for the property.

During the following weeks I was trying to understand the seriousness of this news. It was very difficult to believe that we had been doing this illegally. I decided I had to find a lawyer, but it was very difficult to find lawyers who had no conflict of interest as there are so many parties potentially at fault here: the seller, the seller's realtor, our realtor & the title company. During this time I shut down our rental business with no further reservations and I took down our VRBO site and our personal site. I failed to take our personal website down properly and Mr. Fitzpatrick found a page of it still visible. Please note that the page that was found had no contact information or working links. Only family and friends have stayed since September.

Enclosure 4

I submitted my application for the STVR/NUC by mail just before the 9/28/19 deadline. I did not expect the process of applying to be a violation. Due to the deadline for applying I was hoping to get the STVR/NUC and then figure out how to correct the situation with the DLNR. At that time I had no idea how difficult that would be and I was still under the hope that this could be rectified. I was not planning to continue renting with the STVR/NUC alone.

In late October I received a notice dated 10/15/19 from OCCL that they had received my application for the STVR/NUC and would be scheduling a hearing before the BLNR. In this letter they explicitly asked me to cease any further transient rental activities. I don't recall exactly when this letter arrived, but it was only a couple of days before the fire.

On October 23, 2019, the Kincade Fire which affected Healdsburg, California started in a big wind event, but fortunately it missed us that night. We spent the following days preparing our house to weather the next second bigger wind event that hit early on October 27. This was a chaotic period and on the last day I decided we had to evacuate so we threw our essential belongings in a car and departed less than 2 hours before it hit. Our home is located in a woodland area that was completely burned over by the fire. Fortunately all of our preparations saved the house, but our entire property burned and burned hot. The whole woodland around us is destroyed in what foresters call a "stand replacing fire" which means that most if not all the trees are dead. We will need to remove acres of dead trees to prevent future fires at a cost of tens of thousands that insurance will not cover. We were unable to live in our house for a month and I have been very busy rebuilding destroyed infrastructure and cleaning up the mess. In addition to the woodland we lost several vehicles and a container full of tools and equipment, damage or total loss to several outbuildings, damage to our well and water supply and damage to our septic and irrigation systems. This has been and continues to be a very significant trauma for us.

I plead that the fines be significantly reduced. Due to the fact that the CDUP was not revealed to us at the time we bought the property we had no idea of the restrictions on the property. Respectfully, I don't understand how the fine should be so high according to the Penalties Schedule provided by OCCL. The first paragraph of Section 2 says "Penalties will be assessed for each action committed by an individual(s) that conducts an unauthorized land use AND that impairs or destroys natural resources". In addition under Section 2.1.1 Identified Land Use Penalties, Major Harm to the Resource/Board Permit (D) the wording specifies "major harm to the resource". While I can't deny that we did conduct an unauthorized use, I don't believe we caused any harm to the resource.

Since we purchased the property the value has declined by at least \$300,000. Add to this the loss of income and a large fine we may not be able to keep the property. This would be very traumatic as our kids grew up coming to the beach house and it has been our intent to retire there. I believe we have endured penalties enough.