
AFTER RECORDATION (x) MAIL TO () PICKUP BY:

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Tax Map Key (3) 6-8-002-32__

Lot __

Kilohana Kai at Waikoloa, Phase II

WARRANTY DEED WITH COVENANTS

(House and Lot)

DATE: _____.

GRANTOR: **CLEARLY WAIKOLOA LIMITED LIABILITY COMPANY**, a Hawaii limited liability company, of Honolulu, Hawaii (herein called "Grantor").

GRANTEE: _____ (herein [collectively] called "Grantee").

GRANTEE'S
ADDRESS: _____.

GRANTEE'S
TENANCY: _____, and Grantee's _____.

Grantor, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid to Grantor by Grantee, the receipt and sufficiency of which is hereby acknowledged, does by these presents grant, bargain, sell and convey unto Grantee all of Grantor's right, title and interest in and to the following:

That certain real property located in the "Kilohana Kai at Waikoloa, Phase II" subdivision (hereinafter referred to as the "Subdivision") more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (hereinafter referred to as the "Property"), subject to the reservations, covenants, encumbrances and easements set forth therein.

AND the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed in connection therewith unto Grantee in the above-described tenancy, absolutely in fee simple forever.

AND GRANTOR, in consideration of the premises, does hereby covenant to and with Grantee that Grantor is lawfully seised in fee simple of the Property; that the Property is free and clear of and from all encumbrances except (1) the lien of real property taxes not yet by law required to be paid, (2) those of record, and (3) as may herein specifically be set forth and as may be more particularly set forth in said Exhibit A; that Grantor has good right to sell and convey the Property, and that Grantor will **WARRANT AND DEFEND** title to the same unto Grantee against the lawful claims and demands of all persons, except as herein set forth.

AND GRANTEE does hereby covenant and agree to and with Grantor as follows:

1. Ordnance.

a. Grantee hereby acknowledges that: (i) the Subdivision and the Property are located within the former Waikoloa Maneuvers Area, which during the period between 1943 and 1946 (approximate dates) was used by the U.S. Armed Forces for aerial bombing and naval gunnery practice, and military training maneuvers, all involving live ordnance and ammunition; (ii) Grantor believes, but has no personal knowledge, that the area presently occupied by the Subdivision has not been utilized as a bombing range or for other military training maneuvers within the past fifty (50) years; (iii) the Property may contain surface and subsurface ordnance and ordnance materials (said "surface and subsurface ordnance and ordnance materials" are collectively referred to hereinbelow as "Ordnance") which will need to be excavated and removed prior to constructing improvements on the Property; and (iv) Grantee desired and sought the Property with the understanding that the Property could contain Ordnance which could be nuisances or hazards to persons and property.

b. Grantee, for Grantee and Grantee's assigns, the survivor of them, assigns of the survivor of them, the heirs, devisees, executors, legal and personal representatives, administrators, and assigns, successors-in-interest and assigns, and successors-in-interest, and successors-in-trust and assigns, does hereby covenant and agree with Grantor to assume all risks of impairment of Grantee's use and enjoyment of the Property and the Subdivision, of loss of market value of the Property, and of property damage, personal injury or illness, bodily injury or death, arising out of or in connection with the actual or possible presence of Ordnance, and/or the fact that the Subdivision previously comprised a portion of said Waikoloa Maneuvers Area. Without limiting the generality of the foregoing, the risks assumed by Grantee include the risks of:

(1) Enforcement, clean up, or other governmental or regulatory actions instituted or threatened pursuant to any law, statute, ordinance, rule, regulation or order relating to the actual or possible presence of Ordnance on the Property, and/or the fact that the Subdivision previously comprised a portion of said Waikoloa Maneuvers Area;

(2) Claims made or threatened by any third party against Grantee or the Property or the Subdivision relating to damage, contribution, compensation, loss or injury resulting from the actual or possible presence of Ordnance, and/or the fact that the Subdivision previously comprised a portion of said Waikoloa Maneuvers Area; and

(3) The discovery of any occurrence or condition of the Property or Subdivision, or of any real property adjoining or in the vicinity of the Subdivision which could subject Grantee or the Property to any restrictions on ownership, occupancy, transferability or use of the Property under any law, statute, ordinance, rule or regulation relating to the Ordnance.

c. Grantee hereby releases and covenants to release Grantor and Grantor's managers, members, and their respective officers, directors, members, managers, partners, employees and agents (hereinafter collectively referred to as "Grantor Affiliates") from, and waives, any and all claims, demands, actions, lawsuits, proceedings, fines, penalties, damages, liabilities, judgments, awards, expenses, costs, including attorneys' fees and costs (hereinafter collectively referred to as "Claims") arising out of or in connection with the actual or possible presence of Ordnance, and/or the fact that the Subdivision previously comprised a portion of said Waikoloa Maneuvers Area, whether due to the impairment of the use or enjoyment of the Property and the Subdivision, loss of market value of the Property, property damage, personal injury or illness, bodily injury, or death suffered by Grantee, or any person claiming by, through or under Grantee, or otherwise, including, without limitation, any Claims arising out of matters referred to in *Section 1.b* hereinabove.

d. Grantee hereby covenants that Grantee shall indemnify, defend and hold Grantor and Grantor Affiliates harmless, from and against any and all Claims arising out of or in connection with the actual or possible presence of Ordnance, and/or the fact that the Subdivision previously comprised a portion of said Waikoloa Maneuvers Area, whether due to the

impairment of the use or enjoyment of the Property and the Subdivision, loss of market value of the Property, property damage, personal injury or illness, bodily injury, or death suffered by Grantee, or any person claiming by, through or under Grantee, or otherwise, including, without limitation, any Claims arising out of matters referred to in *Section 1.b* hereinabove.

2. Construction and Development Operations.

a. Grantee hereby acknowledges that construction activity by Grantor or others may continue in or adjacent to the Subdivision after Grantee has purchased the Property, and that such activity may result in noise, dust or other annoyances to Grantee, and may limit Grantee's access to the Subdivision and/or to the Property; and (ii) sales activities, including the use of signs and extensive sales displays and activities, may continue in or adjacent to the Subdivision and/or the Property, until the sale of the last lot in the Subdivision or in any other development undertaken by Grantor within the vicinity of the Subdivision. Such construction and sales activities (hereinafter collectively referred to as "Development Activities") may result in substantial levels of noise, dust, vibration, traffic, and other nuisances, disturbances, hazards or other effects within the Subdivision.

b. Grantee hereby accepts and consents to the Development Activities as well as any inconvenience or annoyance which Grantee may experience as a result of such conditions. Grantee hereby covenants and agrees to assume all risks of impairment of the use and enjoyment of the Property or the Subdivision, loss of market value of the Property, and property damage, personal injury or illness, bodily injury or death, arising out of or in connection with the Development Activities, and releases and covenants to release Grantor and Grantor Affiliates from, and waives, any and all Claims arising out of or in connection with Development Activities.

3. Other Conditions.

a. Views. Grantee acknowledges that Grantor has made no representation or warranty as to the preservation of views or view planes from the Property or other lots within the Subdivision, and further understands and acknowledges (i) that the completion of the Subdivision and the future development of land adjacent to or in the vicinity of the Subdivision may have a detrimental effect on the views from the Property and other parts of the Subdivision, (ii) that there are no view easements or rights appurtenant to the Property, and (iii) that views from the Property and the Subdivision are not assured in any way. Grantee hereby covenants and agrees to assume all risks of impairment of the use and enjoyment of the Property and the Subdivision, loss of market value of the Property, and property damage, personal injury or illness, bodily injury or death, arising out of or in connection with the actual or potential loss of views or view planes, and releases and covenants to release Grantor and Grantor Affiliates from, and waives, any and all Claims arising out of or in connection with such loss of views or view planes.

b. Wind Conditions. Grantee acknowledges that the wind on portions of the

Subdivision occasionally exceed forty (40) miles per hour. Grantee hereby covenants and agrees to assume all risks of impairment of the use and enjoyment of the Property and the Subdivision, loss of market value of the Property, and property damage, personal injury or illness, bodily injury or death, arising out of or in connection with such wind conditions, and releases and covenants to release Grantor and Grantor Affiliates from, and waives, any and all Claims arising out of or in connection with such wind conditions.

c. Volcanic Haze. Grantee acknowledges that due to the location of the Property, there is from time to time volcanic haze (otherwise known as "vog") on or around the Subdivision and the Property depending on the wind conditions and volcanic activity. Grantee hereby covenants and agrees to assume all risks of impairment of the use and enjoyment of the Property and the Subdivision, loss of market value of the Property, and property damage, personal injury or illness, bodily injury or death, arising out of or in connection with such volcanic haze, and releases and covenants to release Grantor and Grantor Affiliates from, and waives, any and all Claims arising out of or in connection with volcanic haze.

d. No Telephone Service. Grantee hereby acknowledges and agrees that: (i) there is no access to conventional telephone service (i.e., service via telephone lines) to or from the Property; (ii) if and when conventional telephone service is available within the Subdivision, Grantee will be responsible for obtaining telephone service to the Property, at Grantee's sole cost and expense; (iii) there may be special costs or charges that Grantee will be required to pay before Grantee can receive telephone service; and (iv) Grantor makes no representation or warranty regarding the future availability of conventional telephone service to the Subdivision or the Property.

e. Other Conditions. Grantee hereby acknowledges and agrees that Grantor is conveying the Property to Grantee on an "AS IS" basis, without Grantor's representations or warranties, expressed or implied, except as may be otherwise stated herein. Grantee assumes all risks of impairment of the use and enjoyment of the Property and the Subdivision, loss of market value of the Property, and property damage, personal injury or illness, bodily injury or death, arising out of or in connection with the physical condition of the Property, and releases Grantor and Grantor Affiliates from any and all Claims arising out of or connected with the physical condition of the Property.

AND GRANTOR AND GRANTEE do hereby mutually covenant and agree as follows:

1. Limitations on Covenants to Indemnify.

Any covenant provided in this Warranty Deed by Grantee to indemnify, defend and hold Grantor harmless shall not be applicable to, and shall not extend to obligate (i) any institutional lender, investor or federal housing agency that holds a mortgage or a deed of trust covering the Property, or that takes title to Property upon foreclosure or by way of deed in lieu of foreclosure or otherwise, and (ii) any successor-in-interest of such institutional lender, investor or federal housing agency.

All covenants herein are covenants running with the land hereby conveyed, and all such covenants and the rights and reservations mentioned in this Warranty Deed shall be binding upon and shall inure to the benefit of the respective heirs, personal representatives, successors, successors in trust and assigns of the parties hereto.

2. Miscellaneous.

a. Successors and Assigns. The rights, undertakings, and obligations of Grantor and Grantee shall be binding upon and inure to the benefit of their and each of their respective successors-in-interest and assigns, successors-in-trust and assigns, the survivor of them, assigns of the survivor of them, the heirs, devisees, executors, legal and personal representatives, administrators, and assigns. The conveyance herein set forth and the warranties of Grantor concerning the same are expressly declared to be in favor of Grantee, and Grantee's assigns, the survivor of them, assigns of the survivor of them, the heirs, devisees, executors, legal and personal representatives, administrators, and assigns, successors-in-interest and assigns, and successors-in-trust and assigns.

b. Joint and Several Liability. All covenants and obligations hereunder undertaken by or imposed upon two or more persons shall be deemed to be joint and several unless a contrary intention shall be clearly expressed elsewhere herein.

c. Interpretation. The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, corporations, partnerships, limited liability companies, or limited liability partnerships, and their and each of their respective assigns, the survivor of them, assigns of the survivor of them, the heirs, devisees, executors, legal and personal representatives, administrators, and assigns, successors-in-interest and assigns, and successors-in-trust and assigns, according to the context thereof.

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Warranty Deed as of the date first above written.

CLEARLY WAIKOLOA LIMITED
LIABILITY COMPANY, a Hawaii limited liability company

By _____
Peter Savio
Its Manager

"Grantor"

STATE OF HAWAII)
) SS.
CITY & COUNTY OF HONOLULU)

On this _____ day of _____, 200__, before me personally appeared **Peter Savio**, to me satisfactorily proven, who, being by me duly sworn, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Print Name: _____
Notary Public for above-noted State and County

My Commission expires: _____

EXHIBIT A

All of that certain parcel of land situate at Waikoloa, District of South Kohala, Island and County of Hawaii, State of Hawaii, being more particularly described as follows:

LOT ____, containing an area of _____ square feet, more or less, of the "KILOHANA KAI AT WAIKOLOA, PHASE II" Subdivision, as shown on File Plan Number _____ filed in the Bureau of Conveyances of the State of Hawaii.

TOGETHER WITH a non-exclusive easement for access and utility purposes over and across Roadway Lots _____ of "Kilohana Kai at Waikoloa, Phase II" Subdivision, as shown on said File Plan Number ____; PROVIDED, HOWEVER, that in the event that any portion or all of the Roadway Lots or other designated access areas are conveyed to the State of Hawaii or County of Hawaii, or any other appropriate governmental authority, said easement as to the area so conveyed shall immediately terminate.

TOGETHER ALSO WITH the right and easement to build, construct, reconstruct, rebuild, repair, maintain and operate utility lines and related appurtenances, etc., for water, sewer, electrical, telephone, underground drainage and cable television purposes, etc., as granted by GRANT OF UTILITY EASEMENTS dated July 6, 1988, recorded in Liber 22127 at Page 749; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.

BEING the premises acquired by QUITCLAIM DEED

Grantor	:	Kilohana Waikoloa, LLC, a Hawaii limited liability company
Grantee	:	Clearly Waikoloa Limited Liability Company, a Hawaii limited liability company
Dated	:	July 10, 2001
Recorded	:	Document No. 2001-113131

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

Instrument	:	DECLARATION OF PROTECTIVE COVENANTS
Dated	:	May 27, 1971
Recorded	:	Liber 7577 Page 66

Said Declaration was supplemented by instruments recorded in Liber 7577 at Page 94, Liber 8026 at Page 291, Liber 8306 at Page 196, Liber 9360 at Page 369, Liber 9794 at Page 32, Liber 9956 at Page 597, Liber 10701 at Page 5, Liber 10706 at Page 490, Liber 13453 at Pages 142 and 147, Liber 13588 at Page 658, Liber 13904 at Page 310, Liber 14266 at Page 453, Liber 15016 at Page 403, Liber 18999 at Page 418, Liber 19199 at Page 37, Liber 20893 at Page 418, Liber 21761 at Page 582, Liber 22070 at Page 414, Liber 22127 at Page 733, Liber 22361 at Page 1, Liber 22791 at Page 30, Liber 23172 at Page 387, Liber 23172 at Page 414, Liber 23182 at Page 398, Document No. 96-013206, Document No. 2004-098788, and Document No. _____

3. "EXCEPTING AND RESERVING, HOWEVER, unto the Grantor, its successors and assigns, all rights to underground water under or appurtenant to the granted premises, with the right to assign and transfer said rights to the State of Hawaii, County of Hawaii, Department of Water Supply or any public or private utility or other corporation; provided, however, that said rights shall not include any surface right to enter upon and drill for water."; as excepted and reserved in DEED dated October 18, 1983, recorded in Liber 17412 at Page 62.

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

Instrument : DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KILOHANA KAI, PHASE II
Dated :
Recorded :

[VERIFY IF OTHER RESTRICTIONS APPLY TO INDIVIDUAL LOT]

END OF EXHIBIT A