

DEPARTMENT OF WATER
COUNTY OF KAUAI

"Water has no Substitute – Conserve It!"

APRIL 2007

WAIVER, RELEASE & INDEMNITY AGREEMENT
Instruction Sheet

TO: ALL BUILDING PERMIT APPLICANTS

RE: WAIVER, RELEASE & INDEMNITY AGREEMENT – RECORDATION INSTRUCTIONS

NOTE: THIS AGREEMENT IS SUBJECT TO THE DEPARTMENT OF WATER'S APPROVAL; IF NOT COMPLETED CORRECTLY, THE AGREEMENT MAY BE REJECTED AND SENT BACK FOR CORRECTIONS.

Please complete, sign, and notarize the attached Waiver, Release and Indemnity Agreement. This Agreement must be recorded at the Bureau of Conveyances prior to receiving the Department of Water's approval of your Building Permit Application.

- 1. AGREEMENT MUST BE TYPED. USE ONLY BLACK INK FOR INFORMATION PROVIDED BY THE APPLICANT, ALL SIGNATURES AND THE NOTARY'S INFORMATION AND SIGNATURE.** If you are signing as an individual or on behalf of a corporation, partnership, etc., **please have your situation stated exactly and consistent throughout:** a) the body of the document, b) the signature section and c) the notary section. If there is more than one party to the document, please be sure **ALL** signatures are notarized.
- 2. Do Not** use abbreviations [e.g. Department of Water (DOW)].
- 3. Example of Tax Map Key Number Format: (4) 3 - 6 - 0 2 0 1 6.**
- 4. ALL** blanks must be filled out, including the notary section; please insert **n/a** if not applicable.
- 5. Please use the following format to fit your situation:**

Individual: I, John Doe, unmarried, whose mailing address is..... and whose residence address is.....

Husband/Wife: I (We), John Doe and Jane Doe husband and wife, whose mailing address and whose residence address is.....

Trust: I (We), John Doe, Trustee of the John Doe Revocable Living Trust dated January 1, 2000, and Jane Doe, Trustee of the Jane Doe Revocable Living Trust dated January 1, 2000, whose mailing address is ... and whose residence address is.....

Corporation:

Company/Association: - - - whose principal place of business and mailing address is.....

Partnership: - - - whose principal place of business and mailing address is.....

Power of Attorney: - - - whose principal place of business and mailing address is.....

- 6. Please add the applicable notary section to your Agreement. Please see example notary sections on our website and select the notary section that is applicable to your specific situation** (for example: a partnership or corporation, with a corporate seal, if applicable, is necessary.) Your notary may also have applicable notary sections.

The Bureau will only accept 8 ½" x 11" paper, nothing smaller or larger, nor small sections of paper stapled onto any page of your document.

7. After notarization, to insure the document has been correctly filled out, please submit the completed Waiver, Release and Indemnity Agreement and a **copy of your deed as a means of verifying ownership of the lot** to the Department of Water, P.O. Box 1706, Lihue, HI 96766; or 4398 Pua Loke Street, Lihue, Kaua'i, for further processing.

UPON COMPLETION, THE DOCUMENT WILL BE RETURNED TO YOU FOR YOUR RECORDATION AT THE BUREAU OF CONVEYANCES.

8. **To expedite the return of your recorded Agreement from the Bureau of Conveyances, please mail the original and one (1) copy of the Agreement, along with a \$25.00 check payable to the Bureau of Conveyances, State of Hawaii. Be sure to include two (2) self-addressed stamped envelopes (SASE) with your submittals. Do not send cash.** The Agreements, fee, and SASE must be sent to the following address to be processed:

Bureau of Conveyances
Department of Land & Natural Resources
PO Box 2867
Honolulu, HI 96803

9. The Bureau will retain the original Agreement for microfilming, which may take a few months, before it is returned. However, the Bureau will return a copy of the recorded Agreement within approximately ten (10) business days. **Please submit that copy of the recorded Agreement to the Department so we may process your application.** The original recorded Agreement will be your file copy.

If you have further questions, contact the Bureau of Conveyances in Honolulu at (808) 587-0134, or the Department of Water at (808) 245-5419 or you may visit our website at:

http://www.kauaiwater.org/svc_applications.asp

Note: The Bureau of Conveyances may refuse to record any instrument, paper, or notice if:

- It is not 8.5" x 11"; or, which contains a schedule, inventory, or exhibit not 8.5" x 11".
- It will not reproduce legibly under photographic or electrostatic methods.
- An instrument consists of more than one page, and is not single-sided, numbered consecutively, (beginning with number one); or, the total number of pages contained in the document isn't referenced on the first page thereof; or, has any papers or materials secured or attached in any manner that may conceal any written text; or, is not stapled once or fastened in the upper left corner; or, has a cover or backer attached. The Registrar may remove any rivets affixed to an instrument.
- A self-addressed, correctly-stamped envelope (of appropriate size) does not accompany the instrument.

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation Return By: **MAIL [XX]** Pickup []
TO:

_____ (Type name & mailing address)

WAIVER, RELEASE AND INDEMNITY AGREEMENT
for
TMK: (4) ____ - ____ - ____ : ____ ;

(Reference: Building Permit No.(s) _____)

This Waiver, Release and Indemnity Agreement (hereinafter designated as "AGREEMENT") is made by and between

a Hawaii corporation, whose principal place of business is

and whose mailing address is

and (hereinafter designated as "APPLICANT") in favor of the **DEPARTMENT OF WATER, COUNTY OF KAUAI** (hereinafter designated as "DEPARTMENT OF WATER"), a political subdivision of the State of Hawaii, whose mailing address is P. O. Box 1706, Lihue, HI 96766).

A. APPLICANT'S UNDERSTANDING AND REPRESENTATIONS

(1) APPLICANT has asked for the issuance of a building permit(s) (hereinafter designated as "PERMIT") to APPLICANT for the construction of _____ for the (Project Name): _____, (hereinafter designated as PROJECT), (Project Location & Tax Map Key No.): _____

TMK (4) ____-____-____ ____; _____; (hereinafter designated at "PROPERTY");

(2) APPLICANT understands that the County of Kauai, (hereinafter designated as "COUNTY") has not yet granted final construction approval, as required by Section 9-3.9, Kauai County Code 1987, to all of the water improvements that must be constructed to complete the PROJECT;

(3) APPLICANT understands that all of the required water improvements in PROJECT have not been completed, and that construction activities will be occurring outside and within PROJECT;

(4) APPLICANT acknowledges that damages to PROJECT water improvements may delay or cause the COUNTY to withhold final inspection approval and certification of the completion of the PROJECT water improvements and that such damages, including "but not limited to" damages to water meter boxes, fire hydrants, pipelines and appurtenances shall be corrected at the expense of APPLICANT.

(5) APPLICANT understands that water meters and/or fire detector check meters shall not be provided by the DEPARTMENT OF WATER unless and until the DEPARTMENT OF WATER accepts and approves all of the PROJECT water improvements pursuant to the DEPARTMENT OF WATER's Rules and Regulations and the delivery of all as-built tracings, cost breakdown, conveyance documents, dedication deeds or easements required by the DEPARTMENT OF WATER and completed by APPLICANT.

(6) APPLICANT is fully advised that the PROJECT with improvements has not been completed, approved, and accepted by the DEPARTMENT OF WATER, yet APPLICANT desires to commence construction upon the PROPERTY.

(7) APPLICANT acknowledges that, prior to certification of the completion of the PROJECT water improvements by the DEPARTMENT OF WATER, APPLICANT shall not transfer title to any unit in the PROJECT to a purchaser and shall not allow occupancy of said units to occur.

B. PURPOSE

The purpose of this AGREEMENT is to have APPLICANT waive, release, and indemnify the DEPARTMENT OF WATER from any and all liability for injuries or damages which might arise out of the fact that the COUNTY will be issuing and does issue a PERMIT to APPLICANT for construction activities on the PROPERTY although PROJECT water improvements have not been fully and finally approved and accepted as required by the DEPARTMENT OF WATER's Rules and Regulations.

C. COVERAGE

This AGREEMENT covers any and all liability, claims or actions for death or injury to persons and/or to PROPERTY which may arise out of:

(1) APPLICANT'S presence within, or use of the PROPERTY prior to the time it receives final approval pursuant to the Comprehensive Zoning Ordinance of the Kauai County Code 1987, as amended, and the DEPARTMENT OF WATER's Rules and Regulations; or

(2) The construction activities within the PROPERTY that are necessary to complete the water improvements as required by the DEPARTMENT OF WATER's Rules and Regulations and the Comprehensive Zoning Ordinance of the Kauai County Code 1987, as amended.

(3) The construction activities conducted on-site or off-site by APPLICANT for the PROJECT pursuant to the PERMIT; or

(4) Any other claim resulting from the fact that the DEPARTMENT OF WATER is issuing or has issued PERMIT to APPLICANT for construction activities on the PROPERTY prior to the DEPARTMENT OF WATER's final approval and acceptance of PROJECT water improvements pursuant to the DEPARTMENT OF WATER Rules and Regulations and Comprehensive Zoning Ordinance of the Kauai County Code 1987, as amended, and the Department of Water's Rules and Regulations.

D. WAIVER, RELEASE AND INDEMNITY PROVISIONS

In consideration for the DEPARTMENT OF WATER's approval of the issuance of the PERMIT prior to the final approval and acceptance of the PROJECT water system improvements, APPLICANT does hereby agree, promise and covenant as follows:

(1) APPLICANT waives any and all rights APPLICANT presently has, or will have, to maintain or to pursue any action, claim, suit, or demand against the DEPARTMENT OF WATER which may arise from any of the facts or circumstances described in Paragraph C; and

(2) APPLICANT agrees to indemnify and to hold harmless the DEPARTMENT OF WATER of any and all claims, and for any and all injuries and/or damages, except those caused by the DEPARTMENT OF WATER or its employees, which may arise from any of the facts and circumstances described in Paragraph C; and

(3) APPLICANT agrees that if the DEPARTMENT OF WATER becomes a third-party defendant in any action initiated by APPLICANT against a third-party plaintiff, and if the DEPARTMENT OF WATER is adjudged to be liable for any portion of the damages which APPLICANT is able to recover from the third-party plaintiff, then the AGREEMENT between APPLICANT and the DEPARTMENT OF WATER releases the DEPARTMENT OF WATER from the responsibility of paying to APPLICANT any damages, and ensures that the total damages which APPLICANT could have recovered from the third-party plaintiff will be reduced by the amount of damages which the DEPARTMENT OF WATER would have had to pay to APPLICANT under such judgment of liability.

(4) Applicant shall show the restrictions against conveyance of any unit per Section A (7) in any notice of intention to sell, preliminary report, or final report, for a horizontal property regime filed with the Real Estate Commission of the State of Hawaii.

E. PERFORMANCE BOND

APPLICANT shall post a performance bond, which is attached hereto, in the amount of

_____ Dollars (\$_____)

to the Department of Water as security to guarantee the full completion of the water improvements as shown on the approved construction drawings for this PROJECT.

F. APPLICABILITY

The rights of the DEPARTMENT OF WATER and the obligations of the APPLICANT as contained in this AGREEMENT shall be binding upon and inure to their respective heirs, estates, personal representatives, successors, successors in interest, successors in trust, and assigns. All obligations undertaken by two (2) or more Applicants shall be deemed to be joint and several. It is further agreed and understood that the terms "APPLICANT" and "DEPARTMENT OF WATER" shall mean and include the masculine and feminine, singular and plural number, individuals, or corporations, and their respective successors, heirs, personal representatives and assigns.

This Agreement may be executed in counterparts. Each counterpart shall be executed by one or more parties hereinbefore named and the several counterparts shall constitute one instrument to the same effect as though the signatures of all the parties are upon the same document.

IN WITNESS WHEREOF, APPLICANT has executed this AGREEMENT this _____ day of _____, _____.

OWNER:

(Owner's Signature)

(Please type/stamp name above)

Owner: Please attach applicable notary section to your document (need to be letter size paper, 8-1/2" by 11"). Your notary section should match the situation under which you are signing this document. (You may check our website for a list of example notary sections.)

APPROVED:

Acting Manager and Chief Engineer
Department of Water

APPROVED AS TO FORM AND LEGALITY:

County Attorney

STATE OF HAWAII)
)
COUNTY OF KAUAI) ss.

On this _____ day of _____, _____ before me appeared _____, to me personally known, who, being by me duly sworn, did say that he/she is the **Acting Manager and Chief Engineer** of the **DEPARTMENT OF WATER, COUNTY OF KAUAI**, and that the foregoing instrument was signed on behalf of said Department, and said officer acknowledged said instrument to be the free act and deed of said Department, and that said Department has no corporate seal.

Notary Public, State of Hawaii

Name of Notary: _____

My Commission expires: _____