



DEPARTMENT OF WATER
COUNTY OF KAUAI

“Water has no Substitute – Conserve It!”

FEBRUARY 2003

(Revised Fees September 2009)

TO: **ALL APPLICANTS**

RE: **NON-DEVELOPMENT AGREEMENT – RECORDATION INSTRUCTIONS**

Please complete, sign and notarize the attached Non-Development 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. Please use black ink to sign and notarize the Non-Development Agreement. **If you are signing as an individual or on behalf of a corporation, partnership, etc., please have your situation stated exactly and matching throughout the body of the document, the signature section and the notary section.** If there is more than one name on the document, please be sure to have all signatures and matching notary sections.
2. An individual notary section is included in the Non-Development Agreement. If that does not fit your situation (for example: a partnership or corporation, etc. notary section). Please stamp your corporate seal, if applicable. The Bureau will accept only 8 ½” x 11” paper, nothing smaller or larger, nor small sections of paper stapled onto any page of your document.
3. After notarization, please submit the Non-Development Agreement to the Department of Water for further processing (the Department’s Manager & Chief Engineer, Board of Water Supply Chairperson, as well as the County Attorney’s signature will be obtained by the Department. Upon completion, the agreement will be returned to you for recordation at the Bureau of Conveyances.
4. ***To expedite the return of your recorded Non-Development Agreement from the Bureau of Conveyances submit the original and one (1) copy of the Agreement.*** The Bureau will retain the original Agreement to microfilm it, which may take a few months before it is returned. However, the Bureau will send back your copy of the recorded Agreement in approximately a week. Please submit that copy of the recorded Agreement to the Department so we may finalize your building permit application. The original recorded Agreement will be your file copy.
5. Please mail, along with you original and one (1) copy of your Agreement, a **\$30.00** fee to the Bureau of Conveyances. Please do not send cash. Make your check or money order payable to the Bureau of Conveyances, State of Hawaii. Also include a self-addressed, stamped envelope with your submittal. **NOTE: Fees are \$30.00 per document and \$1.00 per page after 20 pages.** The Agreement, fee and SASE should be sent to the following address:

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

6. If you have further questions, call the Bureau of Conveyances in Honolulu at (808) 587-0147, or the Department of Water at (808) 245-5419 or you may visit our website at: www.kauaiwater.org.

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation Return By: MAIL Pickup []

TO:

(Type name & mailing address)

<p style="text-align: center;">NON-DEVELOPMENT AGREEMENT</p> <p style="text-align: center;">for</p> <p>TMK: (4) ____ - ____ - ____ : ____ ;</p>
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THIS DECLARATION AND AGREEMENT (hereafter "agreement") is made by and between

whose residence and/or mailing address is:

and the COUNTY OF KAUAI, a political subdivision of the State of Hawaii, through its DEPARTMENT OF WATER,
whose mailing address is P.O. Box 1706, Lihue, Hawaii 96766;

WITNESSETH:

WHEREAS,

are the fee owners of the property described in Exhibit "A"; and

WHEREAS, the Developer desires to subdivide the Property into _____ lots, with each lot being entitled to

if adequate infrastructure, including necessary water-system facilities, are constructed and installed to service the Property; and

WHEREAS,

wishes to subdivide the Property in order to transfer their interest in the Property to

WHEREAS, the Developer understands that the Property's existing water-system facilities are inadequate to provide the water service necessary to develop single-family residences and/or additional dwelling units on each of the proposed lots within the Property; and

WHEREAS, the Developer understands that the Department must, in writing, approve the construction plans for water-system facilities within and outside of the Property and install the preceding facilities before constructing any dwellings on the proposed lots of the subdivision;

WHEREAS, the Developer understands that they must declare that the preceding conditions constitute an encumbrance on the Property until adequate water-system facilities have been constructed or this agreement has terminated;

NOW, THEREFORE, in consideration of ONE AND NO/100 DOLLARS (\$1.00) paid by the Developer to the Department, the receipt of which is acknowledged, and the benefits and burdens accruing to each of the parties under this agreement, the Developer and the Department hereby declare and agree as follows:

1. Definitions. When used in this agreement, the following terms shall have the following meanings:

- a. "Additional dwelling unit" shall have the meaning ascribed to it in Article 26, Chapter 8, of the Kauai County Code 1987, as amended.
- b. "Board" means the County of Kauai Board of Water Supply.
- c. "County" means the County of Kauai, a political subdivision of the State of Hawaii.
- d. "Department" means the County of Kauai Department of Water.
- e. "Developer" means all of the parties to this agreement, excluding the Department of Water. The term shall also mean 1) the singular and plural, masculine and feminine, and natural persons, trustees, corporations, partnerships, limited partnerships, sole proprietorships, and any other business entities, and 2) the Developer's estates, heirs, personal representatives, successors, successors-in-trust, assigns, lienors, mortgagees, and any other natural persons or corporate entities to whom an interest in the Property may be conveyed or who may claim an interest in the Property.
- f. "Development" or "developments" includes, but is not limited to, 1) the construction, reconstruction, alteration, remodeling, renovation, or repairing of single-family residences, additional dwelling units, or any other dwelling, building, or structure of any kind, commercial or otherwise, on or within the Property, or 2) the construction of additions or extensions to any dwelling, structure, or building existing as of the date of this agreement, or 3) the construction, reconstruction, installation, alteration, or repair of piping, waste-water systems, landscaping or irrigation-systems:
 - which results in increased fire protection requirements imposed because of the Property's development, increased consumption of water by the Property's occupants, calculated from the date of this agreement, or;
 - which may, in the Department's judgment, possibly contaminate existing potable water-well sources located in the vicinity of the County subdivision no. _____
- g. "Manager" means the Manager and Chief Engineer of the Department, or his or her duly appointed agent.
- h. "Property" means the parcel of land described in Exhibit "A",

which is attached and incorporated by reference into this agreement.

- i. "Rules" mean the Rules and Regulations of the Kauai County Department of Water 1976, as amended.
 - j. "State" means the State of Hawaii.
 - k. "Subdivision" has the meaning ascribed to it under Sec. 9-1.5 of the Kauai County Code 1987, as amended, and any amendments thereto.
 - l. "Water-system facilities" means all water infrastructure the Department determines to be necessary to provide adequate residential water service and fire protection for the Property and shall include, but not be limited to, any and all necessary wells, pumps, storage tanks, water transmission and distribution lines and related meters, valves, and other water-system improvements and equipment.
2. Department approval. Subject to the terms and conditions of this agreement, the Department shall recommend approval of County subdivision no. _____
 3. No further development or subdivision. Other than the subdivision contemplated by County subdivision no. __ _____ the Property shall not be subject to further subdivision, development, or creation of apartments pursuant to Chapter 514A, Haw. Rev. Stat., as amended unless and until adequate water-system facilities, as may be determined by the Department when development occurs on the subdivided Property, are constructed, in place and complete, to provide adequate residential water service and fire protection for the Property.
 4. Inadvertent approval of building permit. If, before necessary water-system facilities are constructed to service the Property, the Department erroneously or inadvertently approves the issuance of a building permit for any development within the proposed subdivision and development occurs on the Property, the Developer shall either construct the necessary water-system facilities for the Property according to a written timetable established by the Department or remove the development on that lot at the owner's or Developer's own cost and expense. Should the Department be required to enforce the provisions of this paragraph through civil court action, the Developer understands and agrees that it shall pay to the Department and be jointly and severally liable for any and all attorneys' fees, court costs, and other related fees, costs, and expenses necessary to prosecute and defend such an action.
 5. Approval of construction drawings and plans. The Developer understands and agrees that the Department retains the right to approve all construction drawings and plans before any water system facilities are constructed on the Property.

6. Future applicability of Rules in effect at time of development. The Developer understands and agrees that they shall be subject to any and all applicable Rules of the Department in effect at such future time that the Property is developed. The Developer further specifically agrees that the Department may apply its construction standards and specifications in effect when the Property is developed in determining whether water-system facilities for the Property are adequate.
7. Future applicability of fees, charges, and costs. Any and all applicable Departmental fees, charges, and costs, including facilities reserve charges, shall be paid at such future time that development occurs, and not at the time that the non-development agreement is entered into.
8. Notice of subsequent transfers. The Developer shall provide the Department with executed and, if applicable, recorded copies of all instruments purporting to transfer any interest in the Property within thirty (30) calendar days of the instrument's execution or, if applicable, recordation.
9. Release of liability. The Developer agrees to release and discharge the Department, the Board, and the County from any claim, action, or lawsuit against the Department, its Board, officers and employees, and the County, its officers and employees, for costs, fees, economic or non-economic damages, injury to persons or damage to property, or liabilities or losses of every nature and kind including, but not limited to, the Developer's inability to develop the Property because of inadequate water-system facilities, arising or growing out of the Department's decision to recommend subdivision approval of the Property. The Developer understands and agrees that the Department's decision to recommend subdivision approval of the Property neither means nor implies that the Property will receive final subdivision approval from the County Planning Commission.
10. Indemnification. The Developer shall forever indemnify, defend, save, and hold harmless the Department, the Board, the County, and their respective officers and employees from and against any and all injury to persons and damage to property, deaths, claims, fines, suits, actions, economic and non-economic damages, costs, losses, and liabilities of every nature and kind arising or growing out of the Department's decision to recommend subdivision approval of the Property. The Developer understands and agrees that if this agreement is terminated for any reason other than the construction of the water-system facilities required by this agreement, this paragraph no. 10 shall survive the termination of the agreement.
11. Parties-in-interest. This agreement is intended for the benefit of the Department. The restrictions declared in this agreement are created and intended to run with the property in favor of the Department only. No rights are intended to be conveyed to or created in any parties other than the Developer and the Department. The

Developer hereby disclaims the conveyance of any interest or right to any other party other than the Department.

12. Covenants running-with-the-land. The covenants and servitudes created in this agreement are hereby declared to encumber and touch and concern the Property and the beneficial rights in the Property. The Developer expressly understands and agrees that the covenants and servitudes created by this agreement shall run with the land as an encumbrance on the Property and shall constitute notice to all persons, natural or corporate, who may have or claim an interest in the Property, until the Developer has obtained from the Department and filed in the State Land Court or Bureau of Conveyances, as the case may be, a written release of the terms and conditions specified in this agreement.
13. Termination of agreement. Subject to paragraph no. 10 of this agreement, this agreement shall terminate upon 1) the recordation of the written release specified in paragraph no. 12 of this agreement, and final acceptance by the Department and construction, in place and complete, of the water-system facilities required by the Department for the Property, or 2) the mutual written agreement of the Developer and the Department.
14. Recordation required. This agreement shall be null, void, and of no legal force and effect unless and until the Department has received an original agreement which has been executed by all of the parties to this agreement and recorded in either the State Bureau of Conveyances or The Land Court of the State, as the case may be. The recorded agreement must be received by the Department within sixty (60) calendar days of its recordation, unless the Department's Manager consents in writing to a later submission date.
15. Non-waiver. Any failure by the Department to exercise its discretion in the event of a breach by the Developer of any provision contained in this agreement shall not be deemed a waiver of the Department's right to exercise later its discretion to terminate this agreement or otherwise act upon the breach. Further, no waiver of any term or condition in this agreement shall be valid unless it is in writing and executed by the Manager and the Board.
16. Governing law. The validity of this agreement, its terms and conditions, and any disputes relating to this agreement, as well as the rights and duties of the parties to this agreement, shall be governed by the laws of the County of Kauai and the State of Hawaii.

17. Integration. The parties intend this agreement to be the final, complete, sole, and only agreement with respect to its subject matter. Any and all prior oral or written representations, statements, correspondence, facsimile transmittals, communications, and expressions in general are merged into and superseded by this agreement and shall be of no force and effect and shall not be admissible to vary or contradict its terms and conditions.
18. Interpretation. The Developer acknowledges, understands, and agrees that this agreement imposes burdensome restrictions on the development of the Property. The Developer further understands and agrees that it has carefully read and reviewed this agreement and that it is aware of and understands the legal effects of this agreement. The terms of this agreement have been negotiated at arm's length by the parties, some of whom have been represented by or consulted with experienced legal counsel. Based on the preceding understandings, acknowledgements, and agreements, the rule of "interpretation against the draftsman" shall not apply in any dispute over the interpretation of the terms or conditions of this agreement.
19. Severability. If any provision of this agreement, or the application of such provision to certain circumstances, is held invalid, all remaining provisions of this agreement and the application of such provisions to circumstances other than those which are held invalid shall not thereby be held invalid, and to this end the terms and conditions of this agreement are expressly understood and agreed by the parties to be severable.

IN WITNESS HEREOF, the Department and the Developer have executed this agreement on _____
day of _____, _____.

APPROVED AS TO FORM
AND LEGALITY:

County Attorney

ACCEPTED:

BOARD OF WATER SUPPLY
COUNTY OF KAUAI

By Its Chairperson

APPROVED:

Manager & Chief Engineer
Department of Water

DEVELOPER (S):

By: _____

STATE OF HAWAII)
) ss.
COUNTY OF KAUAI)

On this _____ day of _____, _____, before me personally appeared

_____,
_____ who is personally known to me
_____ whose identity I proved on the basis of _____
_____ whose identity I proved on the oath/affirmation of _____
_____, a credible witness:

who being by me duly sworn or affirmed, 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.

Notary Public, State of Hawaii

Name of Notary: _____
My Commission expires: _____

(NOTE: THIS IS JUST A SAMPLE NOTARIZATION. PLEASE MAKE SURE THAT THE APPLICABLE NOTARIZATION IS USED FOR YOUR SITUATION. IF APPLICABLE, STAMP CORPORATE SEAL NEXT TO OR ON DEVELOPER'S SIGNATURE. ADD ADDITIONAL NOTARIZATIONS AS NEEDED.)

STATE OF HAWAII)
) ss.
COUNTY OF KAUAI)

On this _____ day of _____, _____, before me appeared _____
_____, to me personally known, who, being by me duly sworn, did say that he/she is
the _____ **Chairperson** of the Board of Water Supply, of the **BOARD OF WATER SUPPLY, COUNTY OF KAUAI**,
and that the foregoing instrument was signed on behalf of said Board by authority of said Board, and said officer
acknowledged said instrument to be the free act and deed of said Board, and that said Board has no corporate seal.

Document Date: _____ # Pages: _____
Document Description: _____

Notary Public, Fifth Circuit, State of Hawai'i

Date: _____

Notary's Name: _____
Commission No.: _____
My commission expires: _____