

LAND COURT

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**HILO HILLSIDE ESTATES, PHASE \_\_\_\_  
WARRANTY DEED WITH RESERVATIONS AND COVENANTS**

GRANTOR: MOANIALA HOLDINGS LLC, a Hawaii limited liability company

GRANTEE: [Name \_\_\_\_\_]  
[Address \_\_\_\_\_]

TAX MAP KEY(S): Hawaii \_\_\_\_\_ (This document consists of \_\_\_\_ pages.)  
Lot No. \_\_\_\_\_

**HILO HILLSIDE ESTATES, PHASE \_\_\_\_\_**  
**WARRANTY DEED WITH RESERVATIONS AND COVENANTS**

LOT NO. \_\_\_\_\_

THIS WARRANTY DEED WITH RESERVATIONS AND COVENANTS is made effective [date] \_\_\_\_\_, by and between **MOANIALA HOLDINGS LLC**, a Hawaii limited liability company, whose principal place of business and post office address is 280 Ponahawai Street, Suite 100, Hilo, Hawaii 96720, hereinafter called the "Grantor," and [Buyer's Name] \_\_\_\_\_, whose address is [Buyer's Address] \_\_\_\_\_, hereinafter called the "Grantee."

**W I T N E S S E T H:**

That the Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to the Grantor paid, the receipt whereof is hereby acknowledged, does hereby give, grant, bargain, sell and convey unto the Grantee in fee simple, absolutely and forever, that certain real property (the "Lot") located at Kukuau, South Hilo, Island and County of Hawaii, State of Hawaii, that is more particularly described in Exhibit A attached hereto and expressly made a part hereof for all purposes, subject to the covenants, conditions, reservations, exceptions, and encumbrances set forth herein and in said Exhibit A.

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

TOGETHER WITH, the rights, as Owner of said Lot \_\_\_\_\_, provided for in the Hilo Hillside Estates Declaration of Covenants, Conditions and Restrictions dated January 19, 2012, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. T-8053268, as the same has been or may be amended and/or supplemented from time to time ("Declaration").

RESERVING unto the Grantor, its successors and assigns, all of the rights of the Grantor, as Declarant under the Declaration.

RESERVING ALSO unto the Grantor, its successors and assigns, all water and water rights within and/or appurtenant to the Lot or any other land over, under, across, along, upon or through which easements or other rights are hereby granted, including, without limitation, all surface, subterranean and artesian waters and all correlative rights, on and under the Lot, and all rights, if any, to wells, springs, streams, and percolating waters located on or under the Lot, with the right to assign and transfer any such water and/or water rights to the State of Hawaii, the County of Hawaii, the Hilo Hillside Estates Community Association, Inc. or other appropriate governmental agencies, or any public or private utility or other corporation, partnership, individual or entity; provided, however, that in the exercise of said rights, the Grantor, its successors and assigns, shall not have the right to drill for water or otherwise disturb the surface of the land of the Lot or any improvements thereon.

TO HAVE AND TO HOLD the same, together with all buildings, improvements, tenements, hereditaments, rights, easements, privileges and appurtenances thereunto belonging

or appertaining or held and enjoyed therewith, including all rights, privileges and benefits as the "Owner", as said term is defined in the Declaration, of the Lot under the Declaration, unto the Grantee, as [Tenancy]\_\_\_\_\_.

AND the Grantor does hereby covenant and agree with the Grantee that the Grantor is lawfully seised in fee simple of the real property described in said Exhibit A and has good right and title to sell and convey the same as aforesaid; that the same is free and clear of all encumbrances except as described in said Exhibit A; and that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid and except for real property taxes for the current year which are to be prorated between the parties hereto.

AND the Grantee does hereby make the following covenants and agreements to and with the Grantor and for the benefit of the Grantor and all other "Owners" as defined in the Declaration, which covenants and agreements shall be covenants running with the Lot, and be binding upon the Grantee and its successors and assigns:

1. Compliance with Declaration. The Grantee agrees to observe, perform, comply with, and abide by, all of the covenants, conditions, restrictions, and provisions contained in the Declaration, including without limitation the provisions relating to agricultural use (Article 4.4), design guidelines (Article V), and if Exhibit A shows that the Lot has an archeological easement area on it, the provisions relating to Historical Sites (Section 5.10).

2. Easements. In addition to the easements set forth in Exhibit A, the Grantee acknowledges and agrees that the Lot is subject to, or may in the future be subject to, easements granted from time to time pursuant to the rights reserved in Article X of the Declaration.

3. Conditions Affecting the Lot. The Grantee acknowledges that it has read the disclosures set forth in the Declaration including, without limitation, those set forth in Article XVII of the Declaration, and agrees that it is acquiring the Lot subject to the matters disclosed therein.

4. Resolution of Disputes through Arbitration.

a. The Grantor and the Grantee hereby consent and agree that any dispute by or between the Grantor, and its affiliates, general contractors, contractors, architects, subcontractors, successors and/or assigns, on the one hand, and the Grantee, the Hilo Hillside Estates Community Association, Inc. acting on the Grantee's behalf, and/or any tenant or occupant of the Lot, on the other hand, arising out of or incident to any warranty or covenant made in this Hilo Hillside Estates Warranty Deed with Reservations and Covenants, the sale of the Lot, or any other aspect of the relationship between such parties regarding the Lot shall be submitted to mediation and, if necessary, to arbitration with Dispute Prevention & Resolution, Inc. ("DPRI") or such other dispute resolution agency as the parties may mutually select. Notwithstanding anything else in this paragraph 4 to the contrary, claims by the Grantee, the Grantor and/or the Hilo Hillside Estates Community Association, Inc. against the contractor for construction defects, as such terms are defined in Hawaii Revised Statutes, Chapter 672E (the

"Contractor Repair Act"), shall be handled in accordance with the provisions of the Contractor Repair Act. The dispute resolution procedures set forth in this paragraph 4 shall be modified as necessary to comply with the provisions of the Contractor Repair Act. The Grantee shall provide the Grantor with a copy of all written notices which the Grantee provides to any contractor and all responses which the Grantee receives from any contractor pursuant to the Contractor Repair Act.

b. Within ten days after the receipt of notice of a dispute by one party from the other, the parties shall attempt in good faith to negotiate for a period of thirty days in an effort to resolve the dispute. If the parties are unable to resolve the dispute within such thirty-day period, they shall retain a mutually acceptable mediator to assist them in resolving the dispute within ten additional days, failing which they shall each retain a mediator within ten additional days and the two mediators thus chosen shall together act as the mediator for the purpose of this paragraph. If either party shall fail to appoint a mediator as required hereunder, the mediator appointed by the other party shall be the sole mediator. Within thirty days after the mediators (or such single mediator) have been retained, the mediators (or such single mediator) shall, on a non-binding basis, advise the parties in writing of their views. The fees and expenses of the mediators (or such single mediator) shall be borne equally. If the parties are still unable to resolve the dispute within such thirty-day period, the parties shall resort to the arbitration procedures set forth below.

c. Either party that desires to submit any issue or dispute to arbitration shall promptly so notify the other party in writing. Claims or disputes involving \$25,000 or less shall be heard by a single arbitrator. Claims involving more than \$25,000 or non-monetary issues shall be heard by a panel of three (3) arbitrators. The arbitrator(s) shall be selected and the arbitration shall be conducted in accordance with the commercial arbitration rules of DPRI then in effect. The decision of a majority of such arbitrators shall be final, conclusive and binding on the parties hereto. All proper costs and expenses of such arbitration including, without limitation, witness fees, attorneys' fees and the fees of the arbitrators shall be charged to the party or parties in such amounts as the majority of the arbitrator(s) shall determine at the time of the award. In the event of the failure, inability or refusal of any arbitrator(s) to act, DPRI shall appoint a replacement arbitrator. An award so rendered shall be binding in all aspects and shall be subject to the provisions of Chapter 658A, Hawaii Revised Statutes, as the same may be amended from time to time (with the exception of Hawaii Revised Statutes §§ 658A-15(b)(2) and (c); 17(c); 19; and 21(a), (c), and (e), which the parties hereby agree to waive).

d. In the resolution of any dispute or controversy as set forth in this paragraph, each party hereby irrevocably waives any right and claim to exemplary or punitive damages in any jurisdiction. Further, the Grantor and the Grantee agree to indemnify, defend and hold the other harmless from and against any and all damage occurring as a result of the resolution of any such dispute other than by arbitration. The Grantor and the Grantee agree that any arbitration proceedings under this section will be submitted to arbitration in Honolulu, Hawaii.

e. The parties further agree that any subsequent documents of assignment, lease or conveyance of the Lot by the Grantee shall contain alternative dispute

resolution provisions substantially in the form set forth in this paragraph 4, requiring the assignee, lessee or grantee to mediate and arbitrate any and all disputes concerning the Lot.

AND the Grantor and the Grantee mutually agree that 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 or corporations, and their and each of their respective heirs, personal representatives, successors and assigns, according to the context thereof. If these presents shall be signed by two or more Grantees, all covenants of such Grantee shall be and for all purposes deemed to be joint and several.

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 instrument, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original of 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.

*[Remainder of page left intentionally blank]*

IN WITNESS WHEREOF, the Grantor and the Grantee have executed this Hilo Hillside Estates, Phase \_\_ Warranty Deed with Reservations and Covenants effective as of the day and year first above written.

MOANIALA HOLDINGS LLC, a Hawaii limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Grantor

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

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

Grantee

STATE OF HAWAII )  
 ) ss.  
COUNTY OF HAWAII )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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

Notary Public, State of Hawaii

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

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description: _____	
Document Date: _____	
No. of Pages: _____	
Jurisdiction (in which notarial act is performed): _____	
Signature of Notary	Date of Notarization and Certification Statement
(Notary Stamp or Seal)	
Printed Name of Notary _____	
Date of Notary Commission Expiration: _____	

STATE OF HAWAII )  
 ) ss.  
COUNTY OF HAWAII )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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

Notary Public, State of Hawaii

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

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description: _____	
Document Date: _____	
No. of Pages: _____	
Jurisdiction (in which notarial act is performed): _____	
Signature of Notary _____	Date of Notarization and Certification Statement _____
(Notary Stamp or Seal)	
Printed Name of Notary _____	
Date of Notary Commission Expiration: _____	



## **EXHIBIT A**

All of that certain parcel of land situated at Kukuau 1st, District of South Hilo, Island and County of Hawaii, State of Hawaii, more particularly described as follows:

LOT \_\_\_\_\_, containing an area of \_\_\_\_\_ acres, more or less, as shown on Map \_\_\_\_\_, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1025 (amended) of Cooke Trust Company, Limited Trustee under the Will and of the Estate of Akana Amelia Richardson, deceased.

SUBJECT, HOWEVER, to the following:

[To be updated at Closing]

FEDERAL CANCELLATION NOTICE REGARDING HILO HILLSIDE ESTATES, PHASE  
\_\_\_ PURCHASE CONTRACT:

YOU HAVE THE OPTION TO CANCEL YOUR CONTRACT OR AGREEMENT OF SALE  
BY NOTICE TO THE SELLER UNTIL MIDNIGHT OF THE SEVENTH DAY FOLLOWING  
THE SIGNING OF THE CONTRACT OR AGREEMENT.

IF YOU DID NOT RECEIVE A PROPERTY REPORT PREPARED PURSUANT TO THE  
RULES AND REGULATIONS OF THE OFFICE OF INTERSTATE LAND SALES  
REGISTRATION DIVISION, U.S. DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT, IN ADVANCE OF YOUR SIGNING THE CONTRACT OR  
AGREEMENT, THE CONTRACT OR AGREEMENT OF SALE MAY BE CANCELED AT  
YOUR OPTION FOR TWO YEARS FROM THE DATE OF SIGNING.

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Name

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Name

"Buyer"

NOTE: THIS PAGE WILL BE REMOVED BEFORE THE ATTACHED DOCUMENT IS  
FILED IN THE BUREAU OF CONVEYANCES OF THE STATE OF HAWAII.