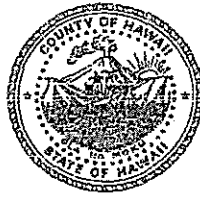


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

**County of Hawaii**  
**PLANNING DEPARTMENT**  
101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

January 23, 2004

Mr. James W. McCully  
P.O. Box 308  
Hakalau, Hawaii 96710

Dear Mr. McCully:

**SUBJECT: Additional Farm Dwelling Agreement**  
**Applicant: James W. McCully**  
**Owners: James W. and Francine M. McCully**  
**State Land Use: Agricultural**  
**County Zoning: Agricultural (A-20a)**  
**Land Area: 4.2224-acres**  
**Tax Map Key: (3) 2-9-003:048**

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Pursuant to authority conferred to the Planning Director by Chapter 25, Article 5, Division 7, Section 25-5-77 of the Zoning Code and Planning Department Rule 13, Farm Dwellings, we have reviewed your request for an additional farm dwelling on the subject property. Your submittals included the following information:

1. A notarized affidavit that the additional dwelling shall be used for farm-related purposes in the form of the enclosed Additional Farm Dwelling Agreement to be submitted for recordation with the Bureau of Conveyances.
2. Name and address of the landowner(s) or lessee(s), if the latter has a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement.
3. Written authorization of the landowner(s) if the lessee filed the request.
4. A farm plan or evidence of the applicant's continual agricultural productivity or farming operation within the County, including an explanation of why this additional farm dwelling is needed in connection with the agricultural productivity or farming operation.

**EXHIBIT**

A

JAN 23 2004

Your farm plan included the following ongoing and proposed income producing agricultural activities:

- (a) Ongoing agricultural activities include the following:
  - i. Continuous agricultural activity since 1994 involving the propagation of orchid plug stock for sale to the potted orchid industry. The activity produces more than one million plants per year. There are three managers and ten greenhouse employees, all of whom work full time in the business.
  - ii. The Additional Farm Dwelling will be used to house the General Manager of the farm.
- 5. In support, evidence of a State of Hawaii Department of Taxation's General Excise (GE) Tax License has also been presented.

Findings:

1. In Chapter 205, Hawaii Revised Statutes (HRS), the State Land Use Law does not authorize residential dwellings as a permitted use in the State Land Use Agricultural district unless the dwelling is related to an agricultural activity or is a farm dwelling. A **farm dwelling** as defined in Section 205-4.5, Chapter 205, HRS, **means a single family dwelling located on and used in connection with a farm, including clusters of single family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling.** (emphasis added)
2. The subject lot was created by subdivision (SUB 6324) approved on August 27, 1993, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be used as a farm dwelling.
3. The Farm Plan, GE Tax License (ID number 30103376), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is income producing agricultural activity and the income is taxed.
4. In addition, the following agencies have submitted their comments as stated below:
  - (a) Department of Water Supply (Letter dated January 14, 2004):

**EXHIBIT**

A

Mr. James W. McCully  
Page 3  
January 23, 2004

“We have reviewed the subject application and have the following comments and conditions.

For your information, there is a service lateral for a 5/8-inch meter to service this property and is adequate for only one dwelling at an average of 400 gallons per day. Inasmuch as this application is proposing an additional detached dwelling, the installation of a separate 5/8-inch meter by the applicant would normally be required in accordance with Department’s regulations. However, the Department’s existing water system facilities cannot support an additional meter for the proposed additional farm dwelling at this time. Extensive improvements and additions, including source, storage, transmission, and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set.

Therefore, the Department has no objections to the proposed application subject to the applicant understanding and accepting that the Department cannot provide water service to the proposed additional farm dwelling. Further, should the application be approved, both dwellings must not share the existing meter.

Should there be any questions, please call Ms. Sheri Komata of our Water Resources and Planning Branch at 961-8070, extension 1.”

(b) Real Property Tax Office (per submitted tax clearance form dated November 25, 2003):

“This is to certify that the real property taxes due to the County of Hawaii on the parcel listed above have been paid up to and including December 31, 2003.”

(c) Department of Health (DOH):

The DOH did not comment on this application as of this date.

Decision:

In view of the above, your request to construct a **second** (first AFD) farm dwelling on the property is approved subject to the following conditions:

1. The additional farm dwelling shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building site. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the farm dwelling.

EXHIBIT

A

Mr. James W. McCully

Page 4

January 23, 2004

2. The agreement shall run with the land and apply to all persons who may, now or in the future, use or occupy the additional farm dwelling. The enclosed Additional Farm Dwelling Agreement must be returned to the Planning Department with the appropriate notarized signatures along with a check made out to the Bureau of Conveyances in the amount of \$25.00 in accordance with the enclosed Additional Farm Dwelling Agreement Instructions. The Planning Department will not approve a building permit application for the additional dwelling until the AFDA document and all required attachments have been accepted for recordation.
3. The First Party shall adhere to the mandate of DWS regarding that there shall be no shared use of the allocated water meter. There is sufficient rainfall in the area (160 plus inches average per year) for the use of a water catchment system.

In reference to the DWS comment, may we suggest the following:

- a. Any dwelling not serviced by a County water system should be provided with and maintain a private potable rain catchment system which includes a minimum 6,000 gallons for domestic consumption or potable uses. This catchment system should adhere to the Department of Public Works, Building Division's "Guidelines for Owners of Rain Catchment Water Systems" as well as the State Department of Health requirements related to water testing and water purifying devices.
  - b. Any farm dwelling should be provided with and maintain a private water supply system which includes an additional 3,000 gallon water storage capacity for fire fighting and emergency purposes. The emergency water supply system, including the necessary compatible connector system and location of the water storage facility on the property, should meet with the approval of the Hawaii County Fire Department.
4. All other applicable rules, regulations, and requirements of the Planning Department (including but not limited to the Zoning Code, Chapter 25), Department of Public Works, Department of Water Supply, Fire Department and State Department of Health and other reviewing agencies/divisions listed on the Building Permit Application.
  5. The First Party shall consult with the DOH to ascertain the number and type of individual wastewater systems that will be allowed on the subject property.

**EXHIBIT**

A

Mr. James W. McCully

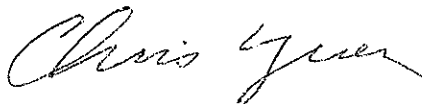
Page 5

January 23, 2004

6. Your Additional Farm Dwelling Agreement has been approved based wholly on ongoing agricultural activity as summarized previously in this letter.
7. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
8. This Additional Farm Dwelling Agreement shall be valid for a period of two (2) years from the date of this approval letter to secure a building permit for the additional farm dwelling. Failure to secure a building permit for this additional farm dwelling on or before January 24, 2006 may cause the Director to initiate proceedings to invalidate the AFDA.

Should you have any questions, please feel free to contact Jonathan Holmes of this office at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN

Planning Director

JRH:pak

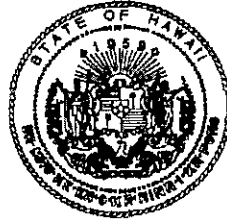
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Enclosures: AFDA document  
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS  
Mr. Mike McCall, RPT  
Long Range Planning Section

**EXHIBIT**

A



R-591

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
MAR 03, 2004 08:02 AM

Doc No(s) 2004-043980



/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

20 1/1 Z6

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AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawaii Planning Department  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720

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TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT**

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PARTIES TO DOCUMENT:

**FIRST PARTY: JAMES W. McCULLY and FRANCINE M. McCULLY**

**SECOND PARTY: COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 2-9-003:048**

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**ADDITIONAL FARM DWELLING AGREEMENT**

THIS AGREEMENT made and executed this 23<sup>rd</sup> day of January, 2004, by and between **JAMES W. McCULLY and FRANCINE M. McCULLY**, herein called the "First Party," whose mailing address is P.O. Box 308, Hakalau, Hawaii 96710, and the **COUNTY OF HAWAII**, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct a second farm dwelling located on the property described by Tax Map Key (3) 2-9-003:048 situated within the State Land Use Agricultural district and zoned Agricultural (A-20a) by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party is the legal owner of the property above described.

IT IS HEREBY FURTHER AGREED that this approval to construct one additional farm dwelling is given subject to the following conditions:

1. The additional farm dwelling shall be used to provide shelter to person(s) involved in the agricultural or farm-related activity on the property. Family members who are not engaged in agricultural or farm-related activity are allowed to reside in the farm dwelling.
2. The agreement shall run with the land and apply to all persons who may now or in the future use or occupy the additional farm dwelling.
3. This agreement shall include any and all conditions specified in the Additional Farm Dwelling Agreement letter, attached to this document as Exhibit "A".

IT IS HEREBY FURTHER AGREED that if this agreement is with a lessee, the legal owner shall be a party to this agreement.

IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

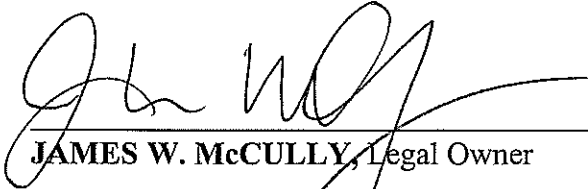
IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and the violation continues, a citation for a new and separate violation may be imposed. There shall be a fine of not more than \$5,000 for any additional violation. The Second Party may also impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Division 3, Article 2, of said code.

IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25, Hawaii County Code, as amended.



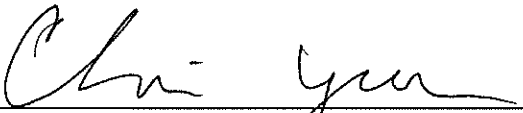
IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:

  
\_\_\_\_\_  
**JAMES W. McCULLY**, Legal Owner

  
\_\_\_\_\_  
**FRANCINE M. McCULLY**, Legal Owner

SECOND PARTY:

  
\_\_\_\_\_  
**CHRISTOPHER J. YUEN**, Planning Director  
County of Hawaii Planning Department

STATE OF HAWAII

)

) SS.

COUNTY OF HAWAII

)

On this 30th day of January, 2004 before me personally appeared **JAMES W. McCULLY and FRANCINE M. McCULLY**, 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.



**JERREL I. YAMAMOTO**  
Notary Public, State of HAWAII

*L.S.*

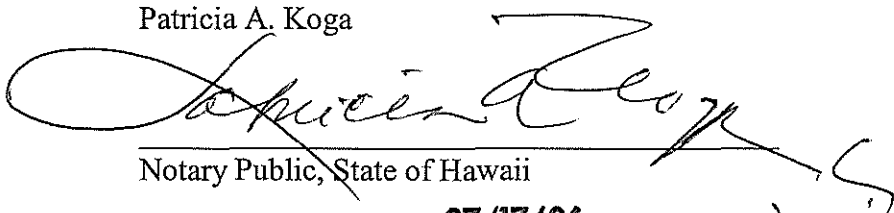
My commission expires: July 4, 2007

STATE OF HAWAII            )  
  ) SS  
COUNTY OF HAWAII        )

On this 19<sup>th</sup> day of February, 2004 before me personally appeared

**CHRISTOPHER J. YUEN**, to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawaii, a government agency, and said Christopher J. Yuen acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.

Patricia A. Koga



Notary Public, State of Hawaii

**07/17/06**

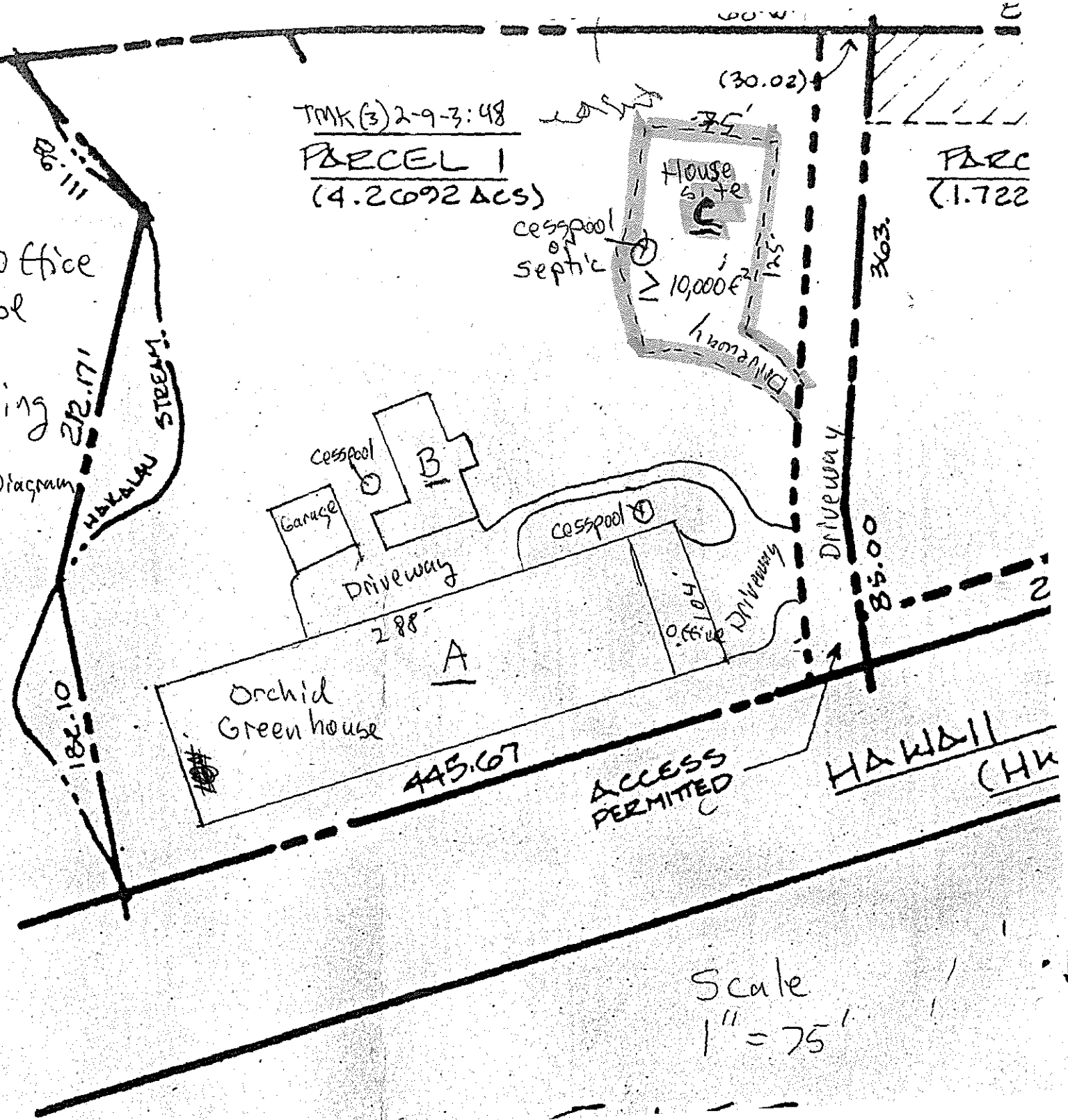
My commission expires: \_\_\_\_\_

\*

A - Greenhouse/office  
Packing House  
(Existing)

B - Farm Dwelling  
(Existing, 1st)  
3 Bdr., 2 1/2 Bth  
see Attached Diagram

C - Proposed  
Additional  
Farm  
Dwelling  
3 Bedrooms  
3 1/2 Bath



Scale  
1" = 75'

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AFTER RECORDATION, RETURN BY MAIL TO:

DEVON M. KIKUKAWA, Escrow Associate  
Title Guaranty Escrow Services, Inc. – Hilo Branch  
460 Kīlauea Ave., Suite 101  
Hilo, HI 96720

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TITLE OF DOCUMENT:

**CANCELLATION OF ADDITIONAL FARM DWELLING AGREEMENT**

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PARTIES TO DOCUMENT:

**FIRST PARTY:           KENNETH ARMOUR AND RAYNA ARMOUR**  
**SECOND PARTY:        COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 2-9-003:048**

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CANCELLATION OF AGREEMENT

THIS CANCELLATION OF AGREEMENT, made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between **KENNETH ARMOUR AND RAYNA ARMOUR**, herein called the "First Party," whose mailing address is P.O. Box 278, Hakalau, HI 96710-0278, and the **COUNTY OF HAWAI'I**, herein called the "Second Party."

WITNESSETH

WHEREAS, on January 23, 2004 an agreement was entered into by and between a predecessor in ownership to the First Party and the Second Party whereby the First Party was authorized to construct an additional farm dwelling on the property described as Tax Map Key (3) 2-9-003:048; and

WHEREAS, the subject area is zoned Agricultural (A-20a) by the County of Hawai'i and classified Agricultural by the State Land Use Commission; and

WHEREAS, the agreement to construct said improvements was duly recorded with the State of Hawai'i Bureau of Conveyances as Document Number 2004-043980 on March 03, 2004 for TMK (3) 2-9-003:048; and

WHEREAS, the First Party and the Second Party agree that execution of said agreement shall be cancelled because the additional farm dwelling has not been and will not be constructed on the subject lot.

NOW, THEREFORE, in consideration of the above recitals and the conditions and covenants contained therein, the parties agree as follows:

The Second Party agrees that the agreement dated and recorded on March 03, 2004 at the State of Hawai'i Bureau of Conveyances as Document Number 2004-043980, between the First Party and the Second Party is no longer applicable and that the agreement is hereby declared null and void.

The Second Party agrees that the agreement dated March 03, 2004 no longer constitutes covenants or encumbrances running with the land for **Tax Map Key (3) 2-9-003:048**.

The First Party agrees to pay for all of the necessary costs and expenditures to record this Cancellation of Agreement.

IT IS MUTUALLY AGREED BY AND BETWEEN the parties that if any additional documents are necessary that they will execute same in order that the agreement dated March 03, 2004 no longer constitutes an encumbrance on **Tax Map Key (3) 2-9-003:048**.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:

\_\_\_\_\_  
**KENNETH ARMOUR** Legal Owner

\_\_\_\_\_  
**RAYNA ARMOUR** Legal Owner

SECOND PARTY:

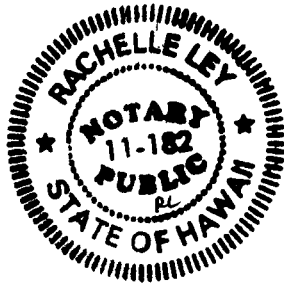
  
\_\_\_\_\_  
**MICHAEL YEE**, Planning Director  
County of Hawai'i Planning Department





STATE OF HAWAI'I )  
 ) SS.  
 COUNTY OF HAWAI'I )

On this 22<sup>nd</sup> day of January, 2018, before me personally appeared Michael Yee to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawai'i, and that the Planning Department of the County of Hawai'i has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawai'i, a government agency, and said Michael Yee acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawai'i.



*Rachelle Ley*  
 \_\_\_\_\_  
 Rachelle Ley

Notary Public, State of Hawai'i  
 Third Judicial Circuit

My Commission Expires: June 12, 2019

Document Date:	<u>Undated at Time of Notary</u>	No. of Pages:	<u>6</u>
Notary Name:	<u>Rachelle Ley</u>		<u>Third Judicial Circuit</u>
Doc. Description:	<u>Cancellation of Additional Farm Dwelling Agreement</u>		
	<u>Tax Map Key (3) 2-9-003:048</u>		
Notary Signature	<i>Rachelle Ley</i>		<u>1/22/2018</u>
			Date

