INSTRUCTIONS FOR COMPLETING

FARM DWELLING AGREEMENT

PLEASE NOTE: It is very important that you follow these instructions to avoid

 unnecessary delays.

1. Please READ the entire Agreement and these instructions carefully.

2. All information on blank lines must be **typewritten** or legibly written in **“black ink”.**

3. All individual names in instruments presented for recordation shall be **typewritten** or stamped BENEATH all signatures. No discrepancy in any name shall exist between the printed name, as it appears in the BODY of the instrument and NOTARY'S certificate of acknowledgment. All signatures must be NOTARIZED.

4. Each page must be 8 ½” X 11” in size. Make a total of three (3) sets of the Agreement.

5. If the instrument contains more than one page, it shall be stapled once in the upper left corner and shall not have a cover or backer attached.

6. The Registrar will not record any instrument that does not reproduce legibly, under photographic or electrostatic methods.

7. “EXHIBIT A”, as noted on the first page of the Agreement, shall be the legal description of the property (metes and bounds), which can be found with the deed of your property. A subdivision map will not be acceptable. Attach one copy with each set of the Farm Dwelling Agreement.

8. Should there be several interests (owners) to the property or a power of attorney agreement, a written statement which authorizes the applicant to process the necessary permits and to obtain a Farm Dwelling Agreement must also be signed, notarized, and attached to each agreement and be identified as “EXHIBIT B”.

9. Documents must include original signatures and be printed single-sided. No paper or materials can be secured or attached to a page in any manner that may conceal any written text.

10. Submit three (3) sets of completed Farm Dwelling Agreements to the Planning Department to obtain signatures of the Planning Department. The Applicant will be contacted by phone or mail to pick up completed documents.

11. Applicants will be responsible for submitting 1 (one) original and 1 (one) copy of the documents along with a RECORDATION FEE of $41.00 to the Bureau of Conveyances along with 2 (two) self-addressed stamped envelopes to the address below.

 State of Hawai‘i

 Department of Land and Natural Resources

 Bureau of Conveyances

 P. O. Box 2867

 Honolulu, HI 96803

 www.hawaii.gov/dlnr/boc

 Phone: (808) 587-0147

12. The Applicant is responsible for submitting a recorded copy of the agreement to the Planning Department to show proof of recordation. The Planning Department will process Zoning Permits upon receipt of the recorded copy of the agreement.

13. Changes by the Applicant to the text of the Agreement (other than its fillable fields), or use of Agreement templates other than the most recent form, will result in the Agreement being forwarded to the Office of the County Attorney for review and approval.

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| --- | --- |
| LAND COURT SYSTEM | REGULAR SYSTEM |

AFTER RECORDATION, RETURN BY MAIL (X) PICKUP ( ) TO:

County of Kaua‘i Planning Department

4444 Rice Street, Suite 473 Līhu‘e, Hawai‘i 96766

**FARM DWELLING AGREEMENT**

THIS AGREEMENT is made and entered into by and between Click or tap here to enter text., whose mailing address is Click or tap here to enter text., hereinafter called the “APPLICANT(S)”, and the COUNTY OF KAUA‘I PLANNING DEPARTMENT, whose business and mailing address is 4444 Rice Street, Suite 473, Līhu‘e, Hawai‘i 96766, hereinafter called the “DEPARTMENT”.

W I T N E S S E T H

WHEREAS, the APPLICANT(S) warrant and represent that they are the owner(s) of that certain parcel of land, Tax Map Key No. Click or tap here to enter text., more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter, the “LAND”); and

WHEREAS, the LAND is classified “Agricultural” by the State Land Use Commission and is zoned “Agriculture” by the County of Kaua‘i; and

WHEREAS, Chapter 205, Hawai‘i Revised Statutes, and the State Land Use District Regulations only permit “farm dwellings” within the State Agricultural Land Use District, unless otherwise relieved from the restriction by a special permit obtained pursuant to Chapter 205, Section 6, Hawai‘i Revised Statutes; and

WHEREAS, a “farm dwelling” is defined by Chapter 205, Section 4.5, Hawai‘i Revised Statutes as “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”; and

WHEREAS, a “family” as used in the definition of a “farm dwelling” shall be defined as “an individual or two or more persons related by blood, marriage or adoption or a group comprising of not more than five persons, not related by blood, marriage or by adoption”; and

WHEREAS, the APPLICANT(S) acknowledge that a violation of Chapter 205, Section 4.5, Hawai‘i Revised Statutes, and the State Land Use Agricultural District restriction is subject to a citation and fine of not more than $5,000.00 pursuant to Chapter 205, Section 13(a), Hawai‘i Revised Statutes, as amended; and

WHEREAS, the APPLICANT(S) also acknowledge that failure to abide by this AGREEMENT may result in the removal of the prohibited structure at their sole expense; and

WHEREAS, the DEPARTMENT is charged with the enforcement of the restrictions in Chapter 205, Hawai‘i Revised Statutes.

NOW, THEREFORE, for and in consideration of the terms, covenants and conditions hereafter contained, the DEPARTMENT and the APPLICANTS(S) (hereinafter the “PARTIES”) hereby agree as follows:

That the dwelling permitted to be constructed on the parcel of LAND classified Agricultural by the State Land Use Commission shall be a “farm dwelling,” as defined by Chapter 205, Hawai‘i Revised Statutes, and the State Land Use District Regulations, as recited herein; and

1. That the dwelling shall only be occupied by a “family”, as defined herein, who derive income from the agricultural activity on the parcel; and
2. That the APPLICANT(S) and all present and future owners, lessees and occupants of said LAND hereby grant the DEPARTMENT the right of entry at the request of the DEPARTMENT to inspect the premises to ensure compliance with the provisions of this AGREEMENT; and
3. That this AGREEMENT shall be a covenant running with the portion of LAND described in Exhibit A, and be binding on the APPLICANT(S), and all present and future owners, lessees and occupants of said LAND and anyone claiming under said APPLICANT(S), their heirs, executors, administrators, successors and assigns, as owners or occupants thereof or otherwise; and
4. That this AGREEMENT shall remain in effect so long as the LAND retains its Agricultural classification under the State Land Use Commission and the pertinent restrictive provisions of Chapter 205, Hawai‘i Revised Statutes, and the State Land Use District Regulations remain in effect; and
5. That the APPLICANT(S) expressly agree(s) to expressly set forth the provisions of this AGREEMENT in any subsequent conveyance, deed, lease or rental agreement to said LAND executed by them, so as to give effect to said covenant; and
6. That this AGREEMENT shall be recorded with the State of Hawai‘i Bureau of Conveyances, fees and costs to be paid by the APPLICANT(S); and
7. The APPLICANT(S), for itself and its successors and assigns, does hereby waive and release the DEPARTMENT and the County of Kaua‘i, a political subdivision of the State of Hawai‘i, whose principal place of business is 4444 Rice Street, Suite 473, Līhu‘e, Kaua‘i, Hawai‘i 96766, from all claims and causes of action, either legal or equitable, which may hereafter accrue by reason of the DEPARTMENT’S execution of this AGREEMENT; and
8. The APPLICANT(S), for itself and its successors and assigns (collectively “INDEMNIFYING PARTY”), does hereby agree to indemnify, hold harmless, and defend the DEPARTMENT and the County of Kaua‘i, its successors, assigns, officers, employees, agents, attorneys, or any other person or legal entity connected with or legally responsible to them (collectively, “INDEMNIFIED PARTY”), from any and all losses, damages, liabilities, claims, actions, causes of action, lawsuits, demands, judgements, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys’ fees, arising out of or related to the DEPARTMENT’S execution of this AGREEMENT.
9. INDEMNIFIED PARTY shall give APPLICANT(S) written notice (a "CLAIM NOTICE") of any losses or discovery of facts on which INDEMNIFIED PARTY intends to base a request for indemnification (an “INDEMNIFIED CLAIM”). INDEMNIFIED PARTY’S failure to provide a CLAIM NOTICE to INDEMNIFYING PARTY under this Section 9 does not relieve INDEMNIFYING PARTY of any liability that INDEMNIFYING PARTY may have to INDEMNIFIED PARTY, but in no event shall INDEMNIFYING PARTY be liable for any losses that result directly from a delay in providing a CLAIM NOTICE, which delay materially prejudices the defense of the related third-party claim. Each CLAIM NOTICE must contain a description of the third-party claim and the nature and amount of the related losses (to the extent that the nature and amount of the losses are known at the time). INDEMNIFIED PARTY shall furnish promptly to INDEMNIFYING PARTY copies of all papers and official documents received in respect of any losses.
10. INDEMNIFIED PARTY may defend an INDEMNIFIED CLAIM with counsel of its own choosing and without the INDEMNIFYING PARTY’S participation if: (a) the INDEMNIFIED CLAIM is one for which INDEMNIFIED PARTY properly gave INDEMNIFYING PARTY a CLAIM NOTICE under Section 9, and INDEMNIFYING PARTY fails to assume the defense or refuses to defend the INDEMNIFED CLAIM); (b) the INDEMNIFIED CLAIM seeks only an injunction or other equitable relief against INDEMNIFIED PARTY; or (c) INDEMNIFIED PARTY reasonably believes: (i) that there are one or more legal or equitable defenses available to it that are different from or in addition to those available to INDEMNIFYING PARTY; and (ii) counsel for INDEMNIFYING PARTY could not adequately represent the interest of INDEMNIFIED PARTY because such interest could be in conflict with those of INDEMNIFYING PARTY; or (iii) such action or proceeding involves, or could have a material effect on, any material matter beyond the scope of the indemnification or defense obligations of INDEMNIFYING PARTY.
11. The terms of this Farm Dwelling Agreement have been approved as to form and legality by the County Attorney as required by the Charter of the County of Kauai. No modification of any term herein, other than the completion of the fillable fields, is permitted without the express written approval of the County Attorney or a Deputy County Attorney. Any such modification made without the express written approval of the County Attorney or a Deputy County Attorney will result in the revocation of the approval as to form and legality.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the PARTIES hereto have caused this Farm Dwelling Agreement to be executed on this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_.

APPROVED: APPLICANT(S):

Director of Planning Click or tap here to enter text.

County of Kaua‘i NOTICE ADDRESS:

Planning Department Click or tap here to enter text.

 Click or tap here to enter text.

 NOTICE ADDRESS:

 Click or tap here to enter text.

[Signature Page to Farm Dwelling Agreement]

STATE OF HAWAI‘I )

) ss.

COUNTY OF KAUA‘I )

On this day of , before me

personally appeared

 , to

me known to be the person described in and who executed the foregoing instrument, and acknowledge that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_executed the same as \_\_\_\_\_ free act and deed.

Notary Public, State of Hawai‘i

My commission expires:

STATE OF HAWAI‘I )

) ss.

COUNTY OF KAUA‘I )

On this day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me

personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who

swore that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is the

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the PLANNING DEPARTMENT of

the COUNTY OF KAUA‘I and acknowledged that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

executed the foregoing instrument as \_\_\_\_\_\_\_\_\_ free act and deed in their capacity

as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the of the PLANNING

DEPARTMENT of the COUNTY OF KAUA‘I .

Notary Public, State of Hawai‘i

My commission expires: