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Attorneys for Defendant
PLAZA HOME MORTGAGE, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

JULIE BETH BEAN,

Plaintiff,

vs.

JAMES ALEXANDER
WESTBROOK, PLAZA HOME
MORTGAGE, INC., MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC., (MERS), solely
as Nominee for Plaza Home
Mortgage, Inc. and its
Successors and Assigns,
SECRETARY OF THE U.S.
DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT;
JOHN DOES 1-10; JANE DOES

CIVIL NO. _____

**DEFENDANT PLAZA HOME
MORTGAGE INC.'S NOTICE OF
REMOVAL OF CIVIL ACTION;
DECLARATION OF MALIA E.
KAKOS; EXHIBITS A-B;
CERTIFICATE OF SERVICE**

1-10; DOE TRUST ENTITIES 1-10;
DOE CORPORATIONS 1-10;
DOE PARTNERSHIPS 1-10;
DOE ENTITIES 1-10; DOE
GOVERNMENTAL AGENCIES 1-10,

Defendants.

**DEFENDANT PLAZA HOME MORTGAGE INC.'S
NOTICE OF REMOVAL OF CIVIL ACTION**

Defendant PLAZA HOME MORTGAGE INC. (“Plaza”), by and through its attorneys, Alston Hunt Floyd & Ing, hereby file this Notice of Removal pursuant to 28 U.S.C. §1446. Plaza has the right to remove the action entitled *Julie Beth Bean v. James Alexander Westbrook, et al.*; Civil No. 14-1-0399(2), filed in the Circuit Court of the Second Circuit of the State of Hawai`i (“State Court”), to the United States District Court for the District of Hawai`i pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 based upon the following:

1. Plaintiff Julie Beth Bean (“Plaintiff”) filed the above-referenced action on July 1, 2014, and served Plaza on July 7, 2014. (Kakos Decl. ¶ 5; Exs. A, B.)

2. Defendant Secretary of the U.S. Department of Housing and Urban Development (“HUD”) has also been served. (Ex. B.)

3. It appears that Defendant Mortgage Electronic Registration Systems (“MERS”) was served. (Ex. B.)

4. No defendant has filed a response to the Complaint. (Ex. B.) Plaintiff agreed to extend the time for Plaza to file its response. (Kakos Decl. ¶ 8.) Plaza’s response is due August 22, 2014. (*Id.*)

5. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Specifically, diversity of citizenship exists because Plaintiff is a resident of North Carolina and no Defendant is a resident of North Carolina. Defendant James Alexander Westbrook is a resident of California. Defendant Plaza is a California corporation with its principal place of business in San Diego, California. According to the Complaint, Defendant Mortgage

Electronic Registration Systems, Inc. (“MERS”) is a wholly owned subsidiary of MERSCORP Holdings, Inc., a Virginia corporation with its corporate headquarters in Reston, Virginia. Defendant The United States Department of Housing and Urban Development is an executive agency of the federal government and headquartered in Washington, D.C. (See Ex. A at Compl. ¶¶ 1-5.)

7. Plaintiff has brought several causes of action based upon the alleged fraudulent transfer of a home owned by her mother to her brother. According to Plaintiff, the amount in controversy is *at least* the amount of mortgage on the subject property. As of January 3, 2014, the loan amount was \$938,250.00, well over the \$75,000 required for diversity jurisdiction. (Ex. A at Compl. ¶¶ 8-11, 20, 23, 25 and Ex. 1.)

8. This Notice is timely filed pursuant to U.S.C. § 1446(b) because it is filed within thirty (30) days of the service of the Complaint on Plaza. (Kakos Decl. ¶ 5; Ex. B.)

9. Plaza will promptly provide written notice of the filing of this Notice of Removal to Plaintiff, HUD, and MERS, and file a copy of the Notice of Removal with the Clerk of the Circuit Court

of the Second Circuit, State of Hawai`i, pursuant to 28 U.S.C. §1446(d).

10. This Notice is not intended and shall not be construed to waive any defenses available to Plaza in this action, and all such defenses are expressly preserved.

11. Venue is proper pursuant to 28 U.S.C. §1446(a) because the State action is pending within the district and division of the United States District Court for the District of Hawai`i.

12. Plaza has attempted to locate a person with authority to consent to removal for the served Defendants HUD and MERS, but has been unsuccessful. (Kakos Decl. ¶ 10.) Plaza will inform this Court via an amended declaration as soon as it knows whether or not HUD and/or MERS will consent to removal. (*Id.*)

13. Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaza is filing its Corporate Disclosure Statement concurrently herewith.

WHEREFORE, Plaza respectfully requests that the action be removed from the Circuit Court of the Second Circuit of the State of Hawai`i, to this Court.

DATED: Honolulu, Hawai`i, August 6, 2014.

 /s/Malia E. Kakos
JUDY A. TANAKA
MALIA E. KAKOS
MAILE OSIKA

Attorneys for Defendant
PLAZA HOME MORTGAGE, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

JULIE BETH BEAN,

Plaintiff,

vs.

JAMES ALEXANDER
WESTBROOK, PLAZA HOME
MORTGAGE, INC., MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC., (MERS), solely
as Nominee for Plaza Home
Mortgage, Inc. and its
Successors and Assigns,
SECRETARY OF THE U.S.
DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT;
JOHN DOES 1-10; JANE DOES
1-10; DOE TRUST ENTITIES 1-
10; DOE CORPORATIONS 1-10;
DOE PARTNERSHIPS 1-10;
DOE ENTITIES 1-10; DOE
GOVERNMENTAL AGENCIES 1-
10,

Defendants.

CIVIL NO. _____

**DECLARATION OF MALIA E.
KAKOS**

DECLARATION OF MALIA E. KAKOS

Pursuant to 28 U.S.C. § 1746, I declare that:

1. I am an attorney representing Defendant PLAZA HOME MORTGAGE, INC. ("Plaza") in this action. I have personal knowledge of, and am competent to testify to, the matters set forth below.

2. I make this declaration in support of *Defendant Plaza Home Mortgage Inc.'s Notice of Removal of Civil Action* and based upon my personal knowledge.

3. Attached hereto as Exhibit "A" is a true and correct copy of the Complaint; Exhibits "1" to "4"; Summons, filed by Plaintiff Julie Beth Bean on July 1, 2014 in the Circuit Court of the Second Circuit, State of Hawai`i.

4. On July 1, 2014, Plaintiff filed a Notice of Pendency of Action; Declaration of Douglas R. Wright; Exhibit "1." This Notice is part of Exhibit A, attached hereto.

5. Plaza was served with the Complaint on July 7, 2014. The Return and Acknowledgment of Service was filed on July 10, 2014. (Ex. B).

6. Defendant Secretary of the U.S. Department of Housing and Urban Development was served with the Complaint; Exhibits "1" to "4"; Summons. Attached hereto as Exhibit B is a

true and correct copy of the docket sheet in State Court for this case showing the date of service.

7. A submission of original affidavit of service for Defendant Mortgage Electronic Registration Systems (“MERS”), solely as Nominee for Plaza Home Mortgage Inc., and its successors and assigns, was filed on July 24, 2014. (Ex. B.)

8. According to the records from the Circuit Court of the Second Circuit of the State of Hawai`i available as of the time of this filing, there are no other documents filed in Civil No. 14-1-0399(2). (Ex. B.)

9. No defendant has filed an answer or other response to the Complaint. (Ex. B.) Plaintiff’s counsel agreed to extend the time for Plaza to file its response. Plaza’s response is due August 22, 2014.

10. This firm, on behalf of Plaza, has contacted Defendant HUD and Defendant MERS to request their consent to removal. We have, however, not been provided with the name and contact information of a person with authority to make such decision. We will continue to seek consent from Defendants HUD

and MERS and will amend this declaration accordingly as soon as possible.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai`i, August 6, 2014.

/s/ Malia E. Kakos
MALIA E. KAKOS

WRIGHT & KIRSCHBRAUN
A Limited Liability Law Company

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Attorneys for Plaintiff
JULIE BETH BEAN

FILED

2014 JUL -1 PM 3:47

K. MAEDA, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

JULIE BETH BEAN,
Plaintiff,

vs.

JAMES ALEXANDER WESTBROOK,
PLAZA HOME MORTGAGE, INC.,
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. (MERS),
solely as Nominee for Plaza Home Mortgage,
Inc., and its Successors and Assigns,
SECRETARY OF THE U.S. DEPARTMENT
OF HOUSING AND URBAN
DEVELOPMENT; JOHN DOES 1-10, JANE
DOES 1-10; DOE TRUST ENTITIES 1-10;
DOE CORPORATIONS 1-10, DOE
PARTNERSHIPS 1-10, DOE ENTITIES 1-10,
DOE GOVERNMENTAL AGENCIES 1-10,
Defendants.

) CIVIL NO. 14-1-0399 (2)
) (Other Civil Action)
)
) **COMPLAINT FOR TEMPORARY AND**
) **PERMANENT INJUNCTION,**
) **DECLARATORY RELIEF, BREACH OF**
) **TRUST AND FIDUCIARY DUTY AND**
) **OTHER RELIEF; EXHIBITS "1" TO "4";**
) **SUMMONS**

**COMPLAINT FOR TEMPORARY AND PERMANENT INJUNCTION,
DECLARATORY RELIEF, BREACH OF TRUST AND FIDUCIARY DUTY
AND OTHER RELIEF**

I hereby certify that this is a full, true and
correct copy of the Original.

Clerk, Second Circuit Court

EXHIBIT A

COMES NOW Plaintiff JULIE BETH BEAN ("PLAINTIFF") by and through her attorneys, WRIGHT & KIRSCHBRAUN, a Limited Liability Law Company, and for Complaint for Temporary and Permanent Injunction, Declaratory Relief, Breach of Trust and Fiduciary Duty and Other Relief against Defendant JAMES ALEXANDER WESTBROOK alleges and avers as follows:

1. At all times relevant herein Plaintiff is a resident of North Carolina.
2. At all times relevant herein Defendant JAMES ALEXANDER WESTBROOK ("DEFENDANT WESTBROOK") is a resident of California.
3. Plaintiff is informed and believes, and based thereon alleges, that Defendant Plaza Home Mortgage, Inc. ("DEFENDANT PLAZA"), a nationwide mortgage lender, was and is a California corporation, organized and existing under the laws of the State of California with its principal place of business in San Diego, California.
4. Plaintiff is informed and believes, and based thereon alleges, that Mortgage Electronic Registration Systems, Inc. ("MERS") is a wholly owned subsidiary of MERSCORP Holdings, Inc., which was and is a Virginia corporation, organized and existing under the laws of the State of Virginia with its corporate headquarters located in Reston, Virginia.
5. The United States Department of Housing and Urban Development ("DEFENDANT HUD") is an executive agency of the federal government and headquartered in Washington, D.C. and is subject and amenable to the jurisdiction and process of this court for the purposes of this Complaint pursuant to 28 U.S.C. § 2410. In Hawaii's jurisdiction the HUD Honolulu Field Office is located at 1132 Bishop Street, Suite 1400, Honolulu, HI 96813-4918.
6. Defendants JOHN DOES 1 THROUGH 10; JANE DOES 1 THROUGH 10; DOE TRUST ENTITIES 1 THROUGH 10; DOE CORPORATIONS 1 THROUGH 10; DOE

PARTNERSHIPS 1 THROUGH 10; DOE ENTITIES 1 THROUGH 10; and DOE GOVERNMENTAL AGENCIES 1 THROUGH 10 (collectively "DOE DEFENDANTS") are named herein under fictitious names for the reasons that their names, identities, capacities, activities and/or responsibilities are presently unknown to Plaintiff. Plaintiff's counsel has made a reasonable inquiry into the facts as alleged in this Complaint; however there may be persons, entities and/or governmental agencies who have an interest in this action unknown to Plaintiff's, or who may claim ownership of or lien rights in the property at issue and/or may in some manner presently unknown to Plaintiff claim some other interest, including a possessory interest thereto, and may be or are liable to Plaintiff because of said ownership, lien rights and/or other interest, or who are agents, servants, employees, representatives, coventurers, associates and/or partners of the named Defendants; and/or who are in some manner presently unknown to Plaintiff engaged in the activities alleged in the complaint filed herein; and Plaintiff prays leave to insert herein their true names and capacities, activities and/or responsibilities when the same are ascertained. In a diligent and good faith effort to ascertain the true names, identities and capacities of Defendants herein, Plaintiff researched County of Maui real property tax records and the State of Hawaii Bureau of Conveyances records.

7. This court has jurisdiction over this action pursuant to Hawaii Revised Statutes Sec. 603-21.5 and venue is proper pursuant to Hawaii Revised Statutes Sec. 603-36.

8. Linda Mishoe Petraitis, ("MRS. PETRAITIS"), now deceased, was the mother of Plaintiff and Defendant Westbrook. Mrs. Petraitis was a resident of the County of Maui, State of Hawaii and the owner in fee simple of the real property located at 79 Kulamanu Circle, Kula, Maui, Hawaii, more particularly identified as Tax Map Key Numbers: (2) 2-3-023-129 ("SUBJECT PROPERTY"), and other personal property.

9. Plaintiff is informed and believes, and based thereon alleges, that on or about January 3, 2014, Mrs. Petraitis, as Borrower, entered into a Mortgage (Home Equity Conversion), Adjustable Rate Reverse Mortgage Loan, with Defendant Plaza, FHA Case No. 141-1623333/962-255, Loan Number 251312015, MIN 1001098-0000256955-7 ("FIRST MORTGAGE"), recorded as Land Court Document No. T8775114 on Certificate No. 807977 on January 10, 2014. The First Mortgage designated MERS as Mortgagee, solely as nominee for lender, Defendant Plaza, and its successors and assigns. A true and correct copy of the Mortgage is attached hereto as Exhibit "1".

10. Plaintiff is informed and believes, and based thereon alleges, that on or about January 3, 2014, Mrs. Petraitis, as Borrower, entered into a Second Mortgage (Home Equity Conversion), FHA Case No. 141-1623333/962-255, Loan Number 251312015, ("SECOND MORTGAGE"). This Second Mortgage was given to the Secretary of Housing and Urban Development, whose business and post office address is 451 Seventh Street, S.W., Washington, DC 20410. A true and correct copy of the Mortgage is attached hereto as Exhibit "2".

11. On or about December 30, 2008, Plaintiff came to Maui at her mother's request to assist after the death of Plaintiff's step father, Walter Petraitis. At that time, Mrs. Petraitis informed Plaintiff of revised estate planning and wanted Plaintiff and Plaintiff's husband, Jamie Bean, to be the executors of her estate and, further, that the Subject Property would be conveyed to Plaintiff and her husband.

12. In 2011 Mrs. Petraitis was admitted to the hospital with a heart attack. Defendant Westbrook did not notify Plaintiff until more than 48 hours after their mother's hospitalization. Defendant Westbrook told both Plaintiff and Plaintiff's sister, Cheryl Westbrook, that their mother was angry with them, did not want to see them, and they were to leave her alone. Plaintiff thereafter

attempted to reach her mother by telephone message and e-mail; however, Mrs. Petraitis never replied.

13. On or about April 8, 2014, Defendant Westbrook told Plaintiff that their mother had pneumonia and had been admitted into the hospital “over the weekend” but she had been responding to medication and oxygen, which is the excuse he gave for not contacting Plaintiff.

14. Plaintiff was later informed during a telephone call she made to the hospital that on March 30, 2014, Mrs. Petraitis was taken by ambulance to the hospital and admitted to the Intensive Care Unit at the Maui Memorial Medical Center with severe respiratory distress, pneumonia and acute kidney failure, contrary to what Defendant Westbrook had told Plaintiff.

15. Plaintiff is informed and believes, and based thereon alleges, that on Friday, April 4, 2014, while hospitalized Mrs. Petraitis signed a Durable Power of Attorney, (“POA”) naming her son, James Alexander Westbrook as attorney-in-fact. A true and correct copy of the Durable Power of Attorney recorded as Land Court Document No. T-8871120 on April 16, 2014, is attached hereto as Exhibit “3”.

16. As attorney-in-fact, Defendant Westbrook owed good faith and a fiduciary duty to Mrs. Petraitis to act in accordance with those powers expressly delineated within the four corners of the empowering document.

17. The POA read, in relevant part, that:

1. GRANT OF POWERS: I, Linda Mishoe Petraitis, of Kula, MAUI, State of Hawaii, do hereby constitute and appoint my son, James Alexander Westbrook, of Studio City, California, with full power of substitution, my true and lawful attorney for me and in my name and for my use and benefit to perform and do all of the following:

3. DEAL WITH PROPERTY: to bargain, contract, agree for, buy, lease, sell, exchange, convey, demise, mortgage, hypothecate, and in any and every way and manner deal in and with lands, leaseholds, goods, merchandise, choses in action, and other property, real or personal or mixed, of all kinds, in possession or in action, upon such terms, covenants, and conditions as my attorney shall agree to; to release mortgages, pledges, or

hypothecations on lands or chattels and to make, do, and transact business of every kind or nature;

3. [sic] EXECUTE INSTRUMENTS: for me and in my name and as my act and deed, to sign, seal, execute, deliver, and acknowledge such checks, promissory notes, deeds, leases and assignments of leases, covenants, indentures, agreements, mortgages, hypothecations, bills of lading, bills, bonds, notes, receipts, evidence of debt, releases and satisfactions of mortgage, judgments and other debts, and such other instruments in writing of whatever kind or nature as may be necessary or proper in the premises; and also to deposit and to withdraw and to borrow for me and on my account sums of money from time to time; and for me and in my name to draw, accept, make, endorse, discount, or otherwise deal with bills of exchange, checks, promissory notes, or other securities for the payment of money;

7. GIFT: to make gifts of cash or property, or the income thereof, in trust or outright, to family members, spouse, friends, and natural objects of my bounty and to make contributions to charitable organizations, provided, however, that my attorney-in-fact shall not have the power under the foregoing to use any asset of mine to satisfy any legal obligation of my attorney-in-fact or to provide for the support of any dependent of my attorney-in-fact unless such dependent shall include myself or those persons whom I am legally obligated to support; nor shall this entitle my attorney-in-fact to transfer property to my attorney-in-fact, except in a fiduciary relationship to me;

18. The POA does not provide for the agent to make self-serving gifts to himself, nor does it provide for unlimited gifting power.

19. Plaintiff is informed and believes, and based thereon alleges, that Mrs. Petraitis remained hospitalized and was taken off oxygen on April 7, 2014, three days after she signed the POA.

20. Plaintiff is informed and believes, and based thereon alleges, that the same day on April 7, 2014, Defendant Westbrook, as attorney in fact for Mrs. Petraitis, executed a Quitclaim Deed, which was recorded on April 16, 2014, as Land Court Document No. T8871121 on Certificate No. 807,977; Issuance of Certificate 1076899 ("Quitclaim Deed") that improperly transferred the Subject Property to himself. A true and correct copy of the Quitclaim Deed is attached hereto as Exhibit "4".

21. This conveyance was a direct transfer from Defendant Westbrook, as agent pursuant to the POA, to himself and benefitted only himself.

22. Plaintiff is informed and believes that on April 8, 2014, the day after Defendant Westbrook executed the Quitclaim Deed transferring the Subject Property to himself, his mother, Mrs. Petraitis, passed away. Defendant Westbrook notified Plaintiff later that evening of our mother's passing.

23. On April 9, 2014, while informing Defendant Westbrook of Plaintiff's plans to come to Maui, Defendant Westbrook told Plaintiff that he is in possession of an updated Will for Mrs. Petraitis, which she purportedly changed in 2011, naming himself and his son, Taylor Westbrook ("TAYLOR"), as sole beneficiaries of all of Mrs. Petraitis' property and leaving nothing to Plaintiff or their sister, Cheryl Westbrook. Defendant Westbrook strenuously objected to Plaintiff coming to Maui.

24. Plaintiff is informed and believes that Taylor began residing on the Subject Property in the fall of 2013, and Defendant Westbrook has permitted Taylor to continue to occupy and reside on the Subject Property without paying rent.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendant Westbrook has listed, or intends to imminently list, the Subject Property for sale.

26. Upon information and belief, no will for Mrs. Petraitis has been produced and no probate proceedings have been commenced for the Estate of Linda Mishoe Petraitis.

27. Upon information and belief, Defendant Westbrook has begun removing items of personal property from the home of Mrs. Petraitis, after her death, for his own use and/or for distribution among others.

28. Plaintiff is a descendant of Mrs. Petraitis, in accordance with Hawaii's Uniform Probate Code Section 560:2-103.

COUNT I
(Injunctive Relief)

29. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 28 above as if set out in full.

30. Upon information and belief Defendant Westbrook intends to list the Subject Property for sale and has distributed other items of personal property owned by Mrs. Petraitis. The wrongful conduct of Defendant Westbrook in conveying the Subject Property into his name under the POA and making distributions of personal property, as stated above, unless restrained and enjoined by an order of this Court, will cause great and irreparable harm to Plaintiff in that Plaintiff may be permanently deprived of her right and interest in said Subject Property should it be listed and sold.

31. Defendant Westbrook has claimed that he and his son Taylor are the sole beneficiaries under Mrs. Petraitis' Will; however, the purported 2011 Will of Mrs. Petraitis has not been produced.

32. Unless injunctive relief is granted, Plaintiff has no adequate remedy of law to prevent the injuries suffered and may continue to suffer in the future unless Defendant Westbrook's wrongful conduct is restrained and enjoined because Plaintiff could forever lose her interest in the Subject Property in the event of a sale and other personal property.

COUNT II
(Declaratory Relief for Breach of Trust and Fiduciary Duty)

33. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 32 above as if set out in full.

34. An actual controversy has arisen and now exists between Plaintiff and Defendant Westbrook regarding the force and effect of the POA and the Quitclaim Deed.

35. Defendant Westbrook, as attorney-in-fact for Mrs. Petraitis, had no authority under the POA to transfer the Subject Property to himself.

36. Plaintiff desires a judicial determination as to the validity of the POA as it relates to Defendant Westbrook's conveyance of property (real or personal) from Defendant Westbrook to himself pursuant to the alleged authority of the POA.

37. Plaintiff requests a judicial determination that the transfer of the Subject Property by Quitclaim Deed to James Alexander Westbrook was improper and fraudulent, a breach of trust and fiduciary duty and/or in violation of the POA and as such, the Quitclaim Deed be deemed null and void.

38. Unless a judicial determination is rendered, Defendant Westbrook will maintain possession of the Subject Property and as the owner on title, sell or otherwise dispose of the Subject Property without regard to Plaintiff's interest.

COUNT III
(Fraud)

39. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 38 above as if set out in full.

40. On March 30, 2014, Mrs. Petraitis was admitted to the Intensive Care Unit at the Maui Memorial Medical Center with severe respiratory distress, pneumonia and acute kidney failure.

41. On April 4, 2014, while in the hospital Mrs. Petraitis signed the POA naming her son, Defendant Westbrook, as attorney-in-fact. Upon information and belief, Defendant Westbrook is the person that requested the preparation of the POA for Mrs. Petraitis.

42. Upon information and belief, three days later, on April 7, 2014, Mrs. Petraitis was taken off oxygen.

43. On April 7, 2014 Defendant Westbrook, acting in his capacity as attorney-in-fact for Mrs. Petraitis, executed the Quitclaim Deed conveying the Subject Property to himself.

44. Defendant Westbrook intended to execute the Quitclaim Deed title thereby conveying the Subject Property from Mrs. Petraitis to himself. The conveyance of the Subject Property to Defendant Westbrook was without consideration and done in anticipation of Mrs. Petraitis' death.

45. Defendant Westbrook's conveyance to himself was intended to benefit only himself.

46. The conveyance of the Subject Property to himself was not an authorized power granted to him as the agent for Mrs. Petraitis.

47. The day after Mrs. Petraitis was taken off oxygen, she passed away on April 8, 2014.

48. The transfer of Mrs. Petraitis's property by Defendant Westbrook as attorney-in-fact for Mrs. Petraitis to himself benefitted only himself and is an improper and fraudulent conveyance.

49. These actions were not disclosed by Defendant Westbrook and discovered only through Plaintiff's efforts after Mrs. Petraitis' death.

**COUNT IV
(Conversion)**

50. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 49 above as if set out in full.

51. Following the conveyance of title from his mother to himself, Defendant Westbrook remains the sole fee owner of the Subject Property.

52. Defendant Westbrook's ownership has been to the exclusion of the descendants of Mrs. Petraitis and her estate.

53. Defendant Westbrook has claimed exclusive ownership of and retained the right and use of the Subject Property for himself.

54. As a direct and proximate result of Defendant Westbrook's conveyance of the Subject Property to himself, pursuant to an alleged authority which did not legally exist, Plaintiff has suffered damages in an amount to be proven at trial.

**COUNT V
(Unjust Enrichment)**

55. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 54 above as if set out in full.

56. Defendant Westbrook received the benefit of the conveyance of the Subject Property to himself, pursuant to his improper use of the Power of Attorney.

57. Defendant Westbrook's retention of this benefit is at the expense of the other descendants of Mrs. Petraitis.

58. The retention of this benefit by Defendant Westbrook is unjust and, as a direct and proximate result of Defendant Westbrooks's actions, Plaintiff has suffered damages in an amount to be proven at trial.

**COUNT VI
(Undue Influence)**

59. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 58 above as if set out in full.

60. Defendant Westbrook is the son of Mrs. Petraitis and, as her attorney-in-fact, was in a confidential and/or fiduciary relationship with his mother and Plaintiff.

61. In December, 2008 Mrs. Petraitis asked Plaintiff to help her with arrangements following the death of her husband, Plaintiff's step-father.

62. During Plaintiff's December 2008 visit Mrs. Petraitis expressed a concern about Defendant Westbrook's financial affairs, specifically that Defendant Westbrook had already taken enough of her money and that he owed Mrs. Petraitis hundreds of thousands of dollars. During a conversation between Mrs. Petraitis and Plaintiff, it was inferred that Mrs. Petraitis' estate planning had recently been updated. Mrs. Petraitis also asked if it would be acceptable for Plaintiff and her husband to be named as co-executors under the tacit estate plan.

63. Upon information and belief Defendant Westbrook unilaterally assumed the role as the intermediary between Mrs. Petraitis and her other children in 2011.

64. Upon information and belief in 2011 Defendant Westbrook took control of Mrs. Petraitis' care, social activities and finances, to the exclusion of Mrs. Petraitis' other children, namely, Plaintiff and her sister.

65. From 2011 until her death, the time period after Defendant Westbrook assumed control of Mrs. Petraitis' care and activities, Plaintiff's attempts to contact her by telephone and e-mail were never responded to.

66. Upon information and belief, Defendant Westbrook filtered any and all messages between Plaintiff and her sister and Mrs. Petraitis.

67. Upon information and belief, Defendant Westbrook caused Mrs. Petraitis to cease contact with her other children.

68. Defendant Westbrook's actions from 2011 through 2014 gave rise to an abuse of confidential and/or fiduciary relationships which replaced the free will of Mrs. Petraitis with his own personal desires that resulted in a benefit to himself.

69. As a direct and proximate result of Defendant Westbrook's undue influence, Mrs. Petraitis was induced to sign the POA.

**COUNT VII
(Constructive Trust)**

70. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 69 above as if set out in full.

71. Defendant Westbrook was in a confidential or fiduciary relationship with Mrs. Petraitis.

72. Upon information and belief, the POA was procured through the undue influence of Defendant Westbrook, the result of repetitive negative comments about Plaintiff and filtered communication between Plaintiff and her Mother intended to manipulate Mrs. Petraitis.

73. Defendant Westbrook used the guise of authority under the POA to gain benefit for himself, *inter alia*, the fraudulent transfer of Subject Property to himself.

74. If the Subject Property had not been conveyed to Defendant Westbrook, it would have been under the control of the Estate of Linda Mishoe Petraitis.

75. The foregoing acts of Defendant Westbrook are an abuse of such confidential and fiduciary relationships and warrant the imposition of a constructive trust for the benefit of the Estate of Linda Mishoe Petraitis.

**COUNT VIII
(Accounting and Surcharge)**

76. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 75 above as if set out in full.

77. The foregoing acts of Defendant Westbrook constitute a failure to exercise his fiduciary duties of Mrs. Petraitis' assets in accordance with a reasonable standard of care and is a breach of his fiduciary responsibilities as the agent for Mrs. Petraitis.

78. Upon information and belief, Mrs. Petraitis owned assets in addition to the Subject Property, including among other things net funds procured pursuant to the First Mortgage, having a principal loan in the amount of \$938,250.00.

79. Upon information and belief, Defendant Westbrook has also distributed items of personal property which are not presently accounted for belonging to the Estate of Linda Mishoe Petraitis.

80. As a result of Defendant Westbrook's improper and wasteful actions, the Estate of Linda Mishoe Petraitis and the beneficiaries thereto, of which Plaintiff is one, have suffered a diminution of value.

81. Such conduct warrants an accounting identifying all assets managed, conveyed, or otherwise exerted control over by Defendant Westbrook, as well as the imposition of personal

liability on Defendant Westbrook in the form of a surcharge in an amount to be determined by the court.

COUNT IX
(Tortious Interference with an Expected Inheritance and/or Prospective Economic Advantage)

82. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 81 above as if set out in full.

83. Defendant Westbrook abused his position of trust and responsibility in both his confidential and fiduciary relationships.

84. Defendant Westbrook never told Plaintiff that Mrs. Petraitis had suffered another heart attack, and he waited until after Mrs. Petraitis' death, ten days after Mrs. Petraitis was rushed to the hospital with significant illness and life-threatening condition, to let Mrs. Petraitis' daughters know of the serious condition which resulted in her death. Defendant Westbrook's cavalier attitude and inaction prevented Plaintiff from having the opportunity to visit or otherwise speak with Mrs. Petraitis before her death.

85. Plaintiff, her sister and Defendant Westbrook are the only descendants of Mrs. Petraitis.

86. During the ten days between March 30 and April 9, Defendant Westbrook obtained the POA and conveyed at least one asset, what is believed to be her biggest asset which is the Subject Property, from Mrs. Petraitis to himself.

87. Mrs. Petraitis signed the POA identifying Defendant Westbrook as her agent, but Mrs. Petraitis did not sign the Quitclaim Deed conveying her residence, the Subject Property, to him.

88. The conveyance of the Subject Property to Defendant Westbrook was without consideration and done in anticipation of Mrs. Petraitis' death.

89. As a result of the wrongful conveyance of the Subject Property to Defendant Westbrook, the Subject Property cannot presently be included in the Estate of Linda Mishoe Petraitis and the descendants would have no claim or interest therein.

90. Any transfers of Mrs. Petraitis' property which diverted assets out of Mrs. Petraitis' estate to Defendant Westbrook for his sole benefit is a breach of his confidential relationship and fiduciary duty and constitutes Tortious Interference with an Expected Inheritance and/or Prospective Economic Advantage.

91. As a direct and proximate result of Defendant Westbrook's actions, Plaintiff has suffered damages in an amount to be proven at trial.

**COUNT X
(Punitive Damages)**

92. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 91 above as if set out in full.

93. The aforesaid activities and conduct of Defendant Westbrook were intentional, wilful, wanton and outrageous and entitle Plaintiff to recover punitive damages in an amount to be proven at trial.

WHEREFORE, Plaintiff prays for the following relief:

a. A declaration of the court that the Durable Power of Attorney dated April 4, 2014 and recorded as Land Court Document No. T-8871120 is null and void.

b. Should the Durable Power of Attorney be deemed valid, that a judicial determination be made that under Provision No. 7 of the Durable Power of Attorney, Defendant Westbrook was not authorized in his capacity as attorney-in-fact to transfer the Subject Property to himself; that

such improper transfer was a breach of trust and fiduciary duty, and that the transfer by Quitclaim Deed dated April 7, 2014, recorded as Land Court Document No. T8871121 on Certificate No. 807,977; Issuance of Certificate 1076899 for the Subject Property is null and void.

d. That any order and judgment entered by the Court, setting aside the force and effect of the Durable Power of Attorney dated April 4, 2014, recorded as Land Court Document No. T-8871120 and/or the property transfer by Quitclaim Deed dated April 7, 2014, recorded as Land Court Document No. T8871121 on Certificate No. 807,977; Issuance of Certificate 1076899, shall be recorded with the Bureau of Conveyances.

e. That the Court find Defendant Westbrook holds the Subject Property in a constructive trust for the Estate of Linda Mishoe Petraitis, Plaintiff and/or for persons not yet determined by the court, and that all items of personal property which have been distributed by Defendant Westbrook be returned and held by the constructive trust.

f. For an accounting by Defendant Westbrook for all matters over which he purported to exercise authority as an agent for Linda Mishoe Petraitis and/or as an agent for the Estate of Linda Mishoe Petraitis.

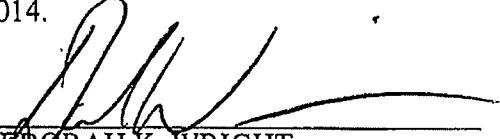
g. For a judgment against Defendant Westbrook and in favor of Plaintiff for special damages in an amount to be proven at trial.

h. For a judgment against Defendant Westbrook and in favor of Plaintiff for general damages, including, but not limited to, damages for conversion, unjust enrichment, surcharge, emotional distress, and tortious interference with an expected inheritance or prospective economic advantage in an amount to be proven at trial.

i. For a judgment against Defendant Westbrook and in favor of Plaintiff for punitive damages as applicable by law.

j. That Plaintiff be awarded reasonable attorneys' fees and costs and such other relief as this Court deems just and equitable under the circumstances and as allowed by law.

DATED: Wailuku, Maui, Hawaii, June 30, 2014.



DEBORAH K. WRIGHT
KEITH D. KIRSCHBRAUN
DOUGLAS R. WRIGHT

Attorneys for Plaintiff
JULIE BETH BEAN

JAM



STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

January 10, 2014 8:01 AM

Doc No(s) T-8775114
on Cert(s) 807977
Issuance of Cert(s)



1 1/2 DML
B-32400741

/s/ NICKI ANN THOMPSON
ASSISTANT REGISTRAR

(M)

(AREA ABOVE RESERVED FOR RECORDING INFORMATION)

After Recordation, Return by Mail To:
Plaza Home Mortgage, Inc.
4820 Eastgate Mall, Suite 100
San Diego, CA 92121
Tax Map Key Number:

TG: 001354689-A L/C
TGE: 02413036149 ①
MICHAEL E. GAMBERDELL
① P95

FHA Case Number: 141-1623333/962-255
Loan Number: 251312015
MIN: 1001098-0000256955-7

State of Hawaii

MORTGAGE
(HOME EQUITY CONVERSION)
THIS MORTGAGE SECURES AN ADJUSTABLE RATE REVERSE MORTGAGE LOAN

THIS MORTGAGE ("Security Instrument") is given on January 03, 2014. The mortgagor is Linda Mishoe Petraitis, as fee owner, whose address is 79 Kulamanu Circle, Kula, HI 96790 ("Borrower"). This Security Instrument is given to Plaza Home Mortgage, Inc., which is organized and existing under the laws of California, and whose business and post office address is 4820 Eastgate Mall, Suite 100, San Diego, CA 92121 ("Lender"). The mortgagee under this Security Instrument is Mortgage Electronic Registration Systems, Inc. ("MERS") (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS. Borrower has agreed to repay to Lender amounts which Lender is obligated to advance, including future advances, under the terms of a Home Equity Conversion Loan Agreement dated the same date as this Security Instrument ("Loan Agreement"). The agreement to repay is evidenced by Borrower's Note dated the same date as this Security Instrument ("Note"). This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, including all future advances, with interest at a rate subject to adjustment, and all renewals, extensions and modifications of the Note, up to a maximum principal amount of Nine Hundred Thirty-Eight Thousand Two Hundred Fifty and 00/100 Dollars (U.S.\$938,250.00); (b) the payment of all other sums, with interest, advanced under Paragraph 5 to protect the security of this Security

EXHIBIT "1"

Instrument or otherwise due under the terms of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. The full debt, including all amounts described in (a), (b), and (c) above, if not paid earlier, is due and payable on **January 14, 2093**. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in Maui County, Hawaii, which has the address of:

79 Kulamanu Circle, Kula, HI, 96790, and is described more fully on Exhibit A attached to and hereby incorporated into this Mortgage ("Property Address").

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall pay when due the principal of and interest on, the debt evidenced by the Note.

2. Payment of Property Charges. Borrower shall pay all property charges consisting of taxes, ground rents, flood and hazard insurance premiums, and special assessments in a timely manner, and shall provide evidence of payment to Lender, unless Lender pays property charges by withholding funds from monthly payments due to the Borrower or by charging such payments to a line of credit as provided for in the Loan Agreement.

3. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire. This insurance shall be maintained in the amounts, to the extent and for the periods required by Lender or the Secretary of Housing and Urban Development ("Secretary"). Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss to Lender, instead of to Borrower and Lender jointly. Insurance proceeds shall be applied to restoration or repair of the damaged Property, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied first to the reduction of any indebtedness under a Second Note and Second Security Instrument held by the Secretary on the Property and then to the reduction of the indebtedness under the Note and this Security Instrument. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

4. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence after the execution of this Security Instrument and Borrower (or at least one Borrower, if initially more than one person are Borrowers) shall continue to occupy the Property as Borrower's principal residence for the term of the Security Instrument. "Principal residence" shall have the same meaning as in the Loan Agreement.

Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

5. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in Paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments. Borrower shall promptly discharge any lien which has priority over this Security Instrument in the manner provided in Paragraph 12(c).

If Borrower fails to make these payments or the property charges required by Paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in Paragraph 2.

To protect Lender's security in the Property, Lender shall advance and charge to Borrower all amounts due to the Secretary for the Mortgage Insurance Premium ("MIP") as defined in the Loan Agreement as well as all sums due to the loan servicer for servicing activities ("Servicing Fee") as defined in the Loan Agreement. Any amounts disbursed by Lender under this Paragraph shall become an additional debt of Borrower as provided for in the Loan Agreement and shall be secured by this Security Instrument.

6. Inspection. Lender or its agent may enter on, inspect or make appraisals of the Property in a reasonable manner and at reasonable times provided that Lender shall give the Borrower notice prior to any inspection or appraisal specifying a purpose for the inspection or appraisal which must be related to Lender's interest in the Property. If the Property is vacant or abandoned or the loan is in default, Lender may take reasonable action to protect and preserve such vacant or abandoned Property without notice to the Borrower.

7. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation, or other taking of any part of the Property, or for conveyance in place of condemnation shall be paid to Lender. The proceeds shall be applied first to the reduction of any indebtedness under the Second Note and Second Security Instrument held by the Secretary on the Property, and then to the reduction of the indebtedness under the Note and this Security Instrument. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) Due and Payable. Lender may require immediate payment in full of all sums secured by this Security Instrument if:

- (i) A Borrower dies and the Property is not the principal residence of at least one surviving Borrower; or
- (ii) All of a Borrower's title in the Property (or his or her beneficial interest in a trust owning all or part of the Property) is sold or otherwise transferred and no other Borrower retains (a) title to the Property in fee simple, (b) a leasehold under a lease for not less than 99 years which is renewable or a lease having a remaining period of not less than 50 years beyond the date of the 100th birthday of the youngest Borrower, or (c) a life estate in the Property, (or retains a beneficial interest in a trust with such an interest in the Property).

(b) Due and Payable with Secretary Approval. Lender may require immediate payment in full of all sums secured by this Security Instrument, upon approval by an authorized representative of the Secretary, if:

- (i) The Property ceases to be the principal residence of a Borrower for reasons other than death and the Property is not the principal residence of at least one other Borrower; or
- (ii) For a period of longer than twelve (12) consecutive months, a Borrower fails to physically occupy the Property because of physical or mental illness and the Property is not the principal residence of at least one other Borrower; or
- (iii) An obligation of the Borrower under this Security Instrument is not performed.

(c) Notice to Lender. Borrower shall notify Lender whenever any of the events listed in Paragraph 9(a)(ii) and (b) occur.

(d) Notice to Secretary and Borrower. Lender shall notify the Secretary and Borrower whenever the loan becomes due and payable under Paragraph 9(a)(ii) and (b). Lender shall not have the right to commence foreclosure until Borrower has had thirty (30) days after notice to either:

- (i) Correct the matter which resulted in the Security Instrument coming due and payable; or
- (ii) Pay the balance in full; or
- (iii) Sell the Property for the lesser of the balance or 95% of the appraised value and apply the net proceeds of the sale toward the balance; or
- (iv) Provide the Lender with a deed in lieu of foreclosure.

(e) Trusts Conveyance of a Borrower's interest in the Property to a trust which meets the requirements of the Secretary, or conveyance of a trust's interests in the Property to a Borrower, shall not be considered a conveyance for purposes of this Paragraph 9. A trust shall not be considered an occupant or be considered as having a principal residence for purposes of this Paragraph 9.

(f) Mortgage Not Insured. Borrower agrees that should this Security Instrument and the Note not be eligible for insurance under the National Housing Act within eight (8) months from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to eight (8) months from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. No Deficiency Judgments. Borrower shall have no personal liability for payment of the debt secured by this

Security Instrument. Lender may enforce the debt only through sale of the Property. Lender shall not be permitted to obtain a deficiency judgment against Borrower if the Security Instrument is foreclosed. If this Security Instrument is assigned to the Secretary upon demand by the Secretary, Borrower shall not be liable for any difference between the mortgage insurance benefits paid to Lender and the outstanding indebtedness, including accrued interest, owed by Borrower at the time of the assignment.

11. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full. This right applies even after foreclosure proceedings are instituted. To reinstate this Security Instrument, Borrower shall correct the condition which resulted in the requirement for immediate payment in full. Foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with a foreclosure proceeding shall be added to the principal balance. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two (2) years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the Security Instrument.

12. First Lien Status.

(a) **Modification.** Borrower agrees to extend this Security Instrument in accordance with this Paragraph 12(a). If Lender determines that the original lien status of the Security Instrument is jeopardized under state law (including but not limited to situations where the amount secured by the Security Instrument equals or exceeds the maximum principal amount stated or the maximum period under which loan advances retain the same lien priority initially granted to loan advances has expired) and state law permits the original lien status to be maintained for future loan advances through the execution and recordation of one or more documents, then Lender shall obtain title evidence at Borrower's expense. If the title evidence indicates that the Property is not encumbered by any liens (except this Security Instrument, the Second Security Instrument described in Paragraph 13(a) and any subordinate liens that the Lender determines will also be subordinate to any future loan advances), Lender shall request the Borrower to execute any documents necessary to protect the priority of the lien status of future loan advances. Borrower agrees to execute such documents. If state law does not permit the original lien status to be extended to future loan advances, Borrower will be deemed to have failed to have performed an obligation under this Security Instrument.

(b) **Tax Deferral Programs.** Borrower shall not participate in a real estate tax deferral program, if any liens created by the tax deferral are not subordinate to this Security Instrument.

(c) **Prior Liens.** Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien or forfeiture of any part of the Property; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to all amounts secured by this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within ten (10) days of the giving of notice.

13. Relationship to Second Security Instrument.

(a) **Second Security Instrument.** In order to secure payments which the Secretary may make to or on behalf of Borrower pursuant to Section 255(i)(1)(A) of the National Housing Act and the Loan Agreement, the Secretary has required Borrower to execute a Second Note and a Second Security Instrument on the Property.

(b) **Relationship of First and Second Security Instruments.** Payments made by the Secretary shall not be

included in the debt under the Note unless:

(i) This Security Instrument is assigned to the Secretary; or

(ii) The Secretary accepts reimbursement by the Lender for all payments made by the Secretary.

If the circumstances described in (i) or (ii) occur, then all payments by the Secretary, including interest on the payments but excluding late charges paid by the Secretary, shall be included in the debt under the Note.

(c) **Effect on Borrower.** Where there is no assignment or reimbursement as described in (b)(i) or (ii) and the Secretary makes payments to Borrower, then Borrower shall not:

(i) Be required to pay amounts owed under the Note, or pay any rents and revenues of the Property under Paragraph 19 to Lender or a receiver of the Property, until the Secretary has required payment in full of all outstanding principal and accrued interest under the Second Note; or

(ii) Be obligated to pay interest or shared appreciation under the Note at any time, whether accrued before or after the payments by the Secretary, and whether or not accrued interest has been included in the principal balance under the Note.

(d) **No Duty of the Secretary.** The Secretary has no duty to Lender to enforce covenants of the Second Security Instrument or to take actions to preserve the value of the Property, even though Lender may be unable to collect amounts owed under the Note because of restrictions in this Paragraph 13.

14. **Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy shall not be a waiver of, or preclude the exercise of, any right or remedy.

15. **Successors and Assigns Bound; Joint and Several Liability.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender. Borrower may not assign any rights or obligations under this Security Instrument or under the Note, except to a trust that meets the requirements of the Secretary. Borrower's covenants and agreements shall be joint and several.

16. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address all Borrowers jointly designate. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this Paragraph 16.

17. **Governing Law; Severability.** This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

18. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and this Security Instrument.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

19. **Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and

receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by this Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this Paragraph 19.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by this Security Instrument is paid in full.

20. Foreclosure Procedure. If Lender requires immediate payment in full under Paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Paragraph 20, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give Borrower notice of sale in the manner provided in Paragraph 16. Lender shall publish a notice of sale and shall sell the Property at the time and place and under the terms specified in the notice of sale. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

21. Lien Priority. The full amount secured by this Security Instrument shall have the same priority over any other liens on the Property as if the full amount had been disbursed on the date the initial disbursement was made, regardless of the actual date of any disbursement. The amount secured by this Security Instrument shall include all direct payments by Lender to Borrower and all other loan advances permitted by this Security Instrument for any purpose. This lien priority shall apply notwithstanding any State constitution, law or regulation, except that this lien priority shall not affect the priority of any liens for unpaid State or local governmental unit special assessments or taxes.

22. Adjustable Rate Feature. Under the Note, the initial stated interest rate of Two and 169/1000's percent (2.169%) which accrues on the unpaid principal balance ("Initial Interest Rate") is subject to change, as described below. When the interest rate changes, the new adjusted interest rate will be applied to the total outstanding principal balance. Each adjustment to the interest rate will be based upon the One-Month London Interbank Offered Rate ("LIBOR") as made available in the "Money Rates" section of the Wall Street Journal ("Index") plus a margin.. If the Index is no longer available, Lender will be required to use any index prescribed by the Department of Housing and Urban Development. The new index will have a historical movement substantially similar to the original index, and the new index and margin will result in an annual percentage rate that is substantially similar to the rate in effect at the time the original index becomes unavailable.

Lender will perform the calculations described below to determine the new adjusted interest rate. The interest rate may change on the first day of March 1, 2014, and on ___ that day of each succeeding year, X the first day of each succeeding month ("Change Date") until the loan is repaid in full.

The value of the Index will be determined, using the most recent Index figure available thirty (30) days before the

Change Date ("Current Index"). Before each Change Date, the new interest rate will be calculated by adding a margin to the Current Index. The sum of the margin plus the Current Index, subject to the rate limitations below, will be called the "Calculated Interest Rate" for each Change Date. The Calculated Interest Rate will be compared to the interest rate in effect immediately prior to the current Change Date (the "Existing Interest Rate").

Annually Adjusting Variable Rate Feature - The Calculated Interest Rate will never increase or decrease by more than two percentage points (2.0%) on any single Change Date. The interest rate will never be more than five percentage points (5.0%) higher or lower than the Initial Interest Rate stated in Paragraph 2 of the Note.

Monthly Adjusting Variable Rate Feature - The Calculated Interest Rate will never increase above 12.169%.

The Calculated Interest Rate will be adjusted if necessary to comply with the rate limitation(s) described above and will be in effect until the next Change Date. At any Change Date, if the Calculated Interest Rate equals the Existing Interest Rate, the interest rate will not change.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under applicable law.

24. Obligatory Loan Advances. Lender's responsibility to make Loan Advances under the terms of the Loan Agreement, including Loan Advances of principal to Borrower as well as Loan Advances for interest, MIP, Servicing Fees, and other charges shall be obligatory.

25. Waivers. Borrower relinquishes all right of dower and curtesy in the Property.

26. Nominee Capacity of MERS. MERS serves as mortgagee of record and secured party solely as nominee, in an administrative capacity, for Lender and its successors and assigns and holds legal title to the interests granted, assigned, and transferred herein. All payments or deposits with respect to the Secured Obligations shall be made to Lender, all advances under the Loan Documents shall be made by Lender, and all consents, approvals, or other determinations required or permitted of Mortgagee herein shall be made by Lender. MERS shall at all times comply with the instructions of Lender and its successors and assigns. If necessary to comply with law or custom, MERS (for the benefit of Lender and its successors and assigns) may be directed by Lender to exercise any or all of those interests, including without limitation, the right to foreclose and sell the Property, and take any action required of Lender, including without limitation, a release, discharge or reconveyance of this Security Instrument. Subject to the foregoing, all references herein to "Mortgagee" shall include Lender and its successors and assigns.

27. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Check all riders that are applicable]

<input type="checkbox"/>	Condominium Rider	<input type="checkbox"/>	PUD Rider
<input type="checkbox"/>	Shared Appreciation Rider	<input type="checkbox"/>	Other

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses: _____

Linda Mishoe Petraitis
LINDA MISHOE PETRAITIS (BORROWER)

Notary Acknowledgement

State of Hawaii
County of Mau

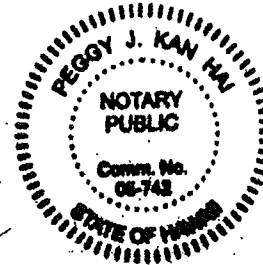
On January 03, 2014, before me personally appeared Linda Mishoe Petraitis, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he/she they executed the same as his/her their free act and deed.

Given under my hand and official seal on January 03, 2014.

Signature *Peggy J. Kan Hai* [SEAL]
Peggy J. Kan Hai
(Type written Name)

Title of the Officer: Notary Public

My Commission Expires: 11/27/2017



Doc. Date: 1/3/2014 # Pages: 10
Notary Name: Peggy J. Kan Hai Not Clerk
Doc. Description: Mortgage - Home (Name of Doc)
Equity Conversion
Peggy J. Kan Hai 1/3/2014
Notary Signature Date

Linda Mishoe Petraitis, a single person.

EXHIBIT A

Exhibit A to the Mortgage given on January 03, 2014, by Linda Mishoe Petraitis, as fee owner ("Borrower") to Plaza Home Mortgage, Inc. ("Lender"). The Property is located in the county of Maui, state of HI, and is described as follows:

Description of Property

Legal Description attached hereto as 'Exhibit A' and by this reference made a part hereof.

TMK: (2) 2-3-023-129

EXHIBIT "A"

All of that certain parcel of land situate at Omaopio, Kula, District of Makawao, Island and County of Maui, State of Hawaii, described as follows:

LOT 204-D, area 0.503 acre, more or less, as shown on Map 142, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 342 of Frank Gonsalves Correia;

Together with access to Kulamanu Circle, a public highway, across Lot 204-H, as shown on Map 142 of Land Court Application No. 342, as set forth by Land Court Order No. 160596, filed March 21, 2005.

Being land(s) described in Transfer Certificate of Title No. 807,977 issued to WALTER FRANK PETRAITIS and LINDA MISHOE PETRAITIS; husband and wife, as Tenants by the Entirety.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED WITH COVENANTS,
CONDITIONS, RESTRICTIONS AND RESERVED RIGHTS

GRANTOR : RIDGELINE HOMES, INC., a Hawaii corporation

GRANTEE : WALTER FRANK PETRAITIS and LINDA MISHOE PETRAITIS,
husband and wife, as Tenants by the Entirety

DATED : June 1, 2006

FILED : Land Court Document No. 3436896

Subject to any and all liens and/or encumbrances of record.

MC
M



STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

January 10, 2014 8:01 AM

Doc No(s) T-8775115
on Cert(s) 807977
Issuance of Cert(s)



1 2/2 DML
B-32400741

/s/ NICKI ANN THOMPSON
ASSISTANT REGISTRAR

2

(AREA ABOVE RESERVED FOR RECORDING INFORMATION)

After Recordation, Return by Mail To:
Plaza Home Mortgage, Inc.
4820 Eastgate Mall, Suite 100
San Diego, CA 92121
Tax Map Key Number:

TG: 20135489-A

TGE: 22413036149
MICHAEL E. GAMBERDELL
⑪ 879

LC
②

FHA Case Number: 141-1623333/962-255
Loan Number: 251312015

State of Hawaii

**SECOND MORTGAGE
(HOME EQUITY CONVERSION MORTGAGE)**

THIS SECOND MORTGAGE SECURES AN ADJUSTABLE RATE REVERSE MORTGAGE LOAN

THIS MORTGAGE ("Security Instrument" or "Second Security Instrument") is given on January 03, 2014. The mortgagor is Linda Mishoe Petrattis, as fee owner, whose address is 79 Kulamanu Circle, Kula, HI 96790 ("Borrower"). This Security Instrument is given to the Secretary of Housing and Urban Development, whose business and post office address is 451 Seventh Street, S.W., Washington, DC 20410 ("Lender" or "Secretary"). Borrower has agreed to repay to Lender amounts which Lender is obligated to advance, including future advances, under the terms of a Home Equity Conversion Loan Agreement dated the same date as this Security Instrument ("Loan Agreement"). The agreement to repay is evidenced by Borrower's Note dated the same date as this Security Instrument ("Second Note"). This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Second Note, including all future advances, with interest at a rate subject to adjustment, and all renewals, extensions and modifications of the Second Note, up to a maximum principal amount of Nine Hundred Thirty-Eight Thousand Two Hundred Fifty and 00/100 Dollars (U.S.\$938,250.00); (b) the payment of all other sums, with interest, advanced under Paragraph 5 to protect the security of this Security Instrument or otherwise due under the terms of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Second Note. The full debt, including all amounts described in (a), (b), and (c) above, if not paid earlier, is due and payable on January 14, 2093. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in Maui County, Hawaii, which

has the address of:

79 Kulamanu Circle, Kula, HI 96790, and is described more fully on Exhibit A attached to and hereby incorporated into this Mortgage ("Property Address").

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is only encumbered by a First Security Instrument given by Borrower and dated the same date as this Security Instrument ("First Security Instrument"). Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS: Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Borrower shall pay when due the principal of and interest on, the debt evidenced by the Second Note.
2. **Payment of Property Charges.** Borrower shall pay all property charges consisting of taxes, ground rents, flood and hazard insurance premiums, and special assessments in a timely manner, and shall provide evidence of payment to Lender, unless Lender pays property charges by withholding funds from monthly payments due to the Borrower or by charging such payments to a line of credit as provided for in the Loan Agreement. Lender may require Borrower to pay specified property charges directly to the party owed payment even though Lender pays other property charges as provided in this Paragraph.
3. **Fire, Flood and Other Hazard Insurance.** Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire. This insurance shall be maintained in the amounts, to the extent and for the periods required by Lender. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss to Lender, instead of to Borrower and Lender jointly. Insurance proceeds shall be applied to restoration or repair of the damaged Property, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied first to the reduction of any indebtedness under the Second Note and this Security Instrument. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Second Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

4. **Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application;**

Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence after the execution of this Security Instrument and Borrower (or at least one Borrower, if initially more than one person are Borrowers) shall continue to occupy the Property as Borrower's principal residence for the term of the Security Instrument. "Principal residence" shall have the same meaning as in the Loan Agreement.

Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

5. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in Paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments. Borrower shall promptly discharge any lien which has priority over this Security Instrument in the manner provided in Paragraph 12(c).

If Borrower fails to make these payments or the property charges required by Paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in Paragraph 2.

To protect Lender's security in the Property, Lender shall advance and charge to Borrower all amounts due to the Secretary for the Mortgage Insurance Premium ("MIP") as defined in the Loan Agreement as well as all sums due to the loan servicer for servicing activities ("Servicing Fee") as defined in the Loan Agreement. Any amounts disbursed by Lender under this Paragraph shall become an additional debt of Borrower as provided for in the Loan Agreement and shall be secured by this Security Instrument.

6. Inspection. Lender or its agent may enter on, inspect or make appraisals of the Property in a reasonable manner and at reasonable times provided that Lender shall give the Borrower notice prior to any inspection or appraisal specifying a purpose for the inspection or appraisal which must be related to Lender's interest in the Property. If the Property is vacant or abandoned or the loan is in default, Lender may take reasonable action to protect and preserve such vacant or abandoned Property without notice to the Borrower.

7. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, shall be paid to Lender. The proceeds shall be applied first to the reduction of any indebtedness under the Second Note and this Security Instrument. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Second Note and this Security Instrument shall be paid to the entity legally entitled thereto.

8. Fees. Lender may collect fees and charges authorized by the Secretary for the Home Equity Conversion Mortgage Insurance Program.

9. Grounds for Acceleration of Debt.

(a) **Due and Payable.** Lender may require immediate payment in full of all sums secured by this Security

Instrument if:

- (i) A Borrower dies and the Property is not the principal residence of at least one surviving Borrower; or
 - (ii) All of a Borrower's title in the Property (or his or her beneficial interest in a trust owning all or part of the Property) is sold or otherwise transferred and no other Borrower retains (a) title to the Property in fee simple, (b) a leasehold under a lease for not less than 99 years which is renewable or a lease having a remaining period of not less than 50 years beyond the date of the 100th birthday of the youngest Borrower, or (c) a life estate in the Property, (or retains a beneficial interest in a trust with such an interest in the Property); or
 - (iii) The Property ceases to be the principal residence of a Borrower for reasons other than death and the Property is not the principal residence of at least one other Borrower; or
 - (iv) For a period of longer than twelve (12) consecutive months, a Borrower fails to physically occupy the Property because of physical or mental illness and the Property is not the principal residence of at least one other Borrower; or
 - (v) An obligation of the Borrower under this Security Instrument is not performed.
- (b) **Notice to Lender.** Borrower shall notify the Lender whenever any of the events listed in Paragraph 9(a)(ii)-(v) occur.
- (c) **Notice to Borrower.** Lender shall notify Borrower whenever the loan becomes due and payable under this Paragraph 9(a)(ii)-(v). Lender shall not have the right to commence foreclosure until Borrower has had thirty (30) days after notice to either:
- (i) Correct the matter which resulted in the Security Instrument coming due and payable; or
 - (ii) Pay the balance in full; or
 - (iii) Sell the Property for the lesser of the balance or 95% of the appraised value and apply the net proceeds of the sale toward the balance; or
 - (iv) Provide the Lender with a deed in lieu of foreclosure.
- (d) **Trusts.** Conveyance of a Borrower's interest in the Property to a trust which meets the requirements of the Secretary, or conveyance of a trust's interests in the Property to a Borrower, shall not be considered a conveyance for purposes of this Paragraph 9. A trust shall not be considered an occupant or be considered as having a principal residence for purposes of this Paragraph 9.

10. No Deficiency Judgments. Borrower shall have no personal liability for payment of the debt secured by this Security Instrument. Lender may enforce the debt only through sale of the Property. Lender shall not be permitted to obtain a deficiency judgment against Borrower if the Security Instrument is foreclosed.

11. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full. This right applies even after foreclosure proceedings are instituted. To reinstate this Security Instrument, Borrower shall correct the condition which resulted in the requirement for immediate payment in full. Foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with a foreclosure proceeding shall be added to the principal balance. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure

proceedings within two (2) years immediately proceeding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the Security Instrument.

12. Second Lien Status.

(a) **Modification.** Borrower agrees to extend this Security Instrument in accordance with this Paragraph 12(a). If Lender determines that the original lien status of the Security Instrument is jeopardized under state law (including but not limited to situations where the amount secured by the Security Instrument equals or exceeds the maximum principal amount stated or the maximum period under which loan advances retain the same lien priority initially granted to loan advances has expired) and state law permits the original lien status to be maintained for future loan advances through the execution and recordation of one or more documents, then Lender shall obtain title evidence at Borrower's expense. If the title evidence indicates that the Property is not encumbered by any liens (except the First Security Instrument described in Paragraph 13(a), this Second Security Instrument and any subordinate liens that the Lender determines will also be subordinate to any future loan advances), Lender shall request the Borrower to execute any documents necessary to protect the priority of the lien status of future loan advances. Borrower agrees to execute such documents. If state law does not permit the original lien status to be extended to future loan advances, Borrower will be deemed to have failed to have performed an obligation under this Security Instrument.

(b) **Tax Deferral Programs.** Borrower shall not participate in a real estate tax deferral program, if any liens created by the tax deferral are not subordinate to this Security Instrument.

(c) **Prior Liens.** Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien or forfeiture of any part of the Property; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to all amounts secured by this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within ten (10) days of the giving of notice.

13. Relationship to First Security Instrument.

(a) **Second Security Instrument.** In order to secure payments which the Secretary may make to or on behalf of Borrower pursuant to Section 255(f)(1)(A) of the National Housing Act and the Loan Agreement, the Secretary has required Borrower to execute a Second Note and this Second Security Instrument. Borrower has also executed a First Note and First Security Instrument.

(b) **Relationship of First and Second Security Instruments.** Payments made by the Secretary shall not be included in the debt under the First Note unless:

(i) The First Security Instrument is assigned to the Secretary; or

(ii) The Secretary accepts reimbursement by the holder of the First Note for all payments made by the Secretary.

If the circumstances described in (i) or (ii) occur, then all payments by the Secretary, including interest on the payments, but excluding late charges paid by the Secretary, shall be included in the debt under the First Note.

(c) **Effect on Borrower.** Where there is no assignment or reimbursement as described in (b)(i) or (ii) and the Secretary makes payments to Borrower, then Borrower shall not:

(i) Be required to pay amounts owed under the First Note, or pay any rents and revenues of the Property under Paragraph 19 to the holder of the First Note or a receiver of the Property, until the Secretary has required payment in full of all outstanding principal and accrued interest under the Second Note; or

(ii) Be obligated to pay interest or shared appreciation under the First Note at any time, whether accrued before or after the payments by the Secretary, and whether or not accrued interest has been included in the principal balance under the First Note.

(d) **No Duty of the Secretary.** The Secretary has no duty to the holder of the of the First Note to enforce covenants of the Second Security Instrument or to take actions to preserve the value of the Property, even though the holder of the First Note may be unable to collect amounts owed under the First Note because of restrictions in this Paragraph 13.

(e) **Restrictions on Enforcement.** Notwithstanding anything else in this Security Instrument, the Borrower shall not be obligated to comply with the covenants hereof, and Paragraph 19 shall have no force and effect, whenever there is no outstanding balance under the Second Note.

14. **Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy shall not be a waiver of, or preclude the exercise of, any right or remedy.

15. **Successors and Assigns Bound; Joint and Several Liability.** Borrower may not assign any rights or obligations under this Security Instrument or under the Second Note, except to a trust that meets the requirements of the Secretary. Borrower's covenants and agreements shall be joint and several.

16. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address all Borrowers jointly designate. Any notice to the Secretary shall be given by first class mail to the HUD Field Office with jurisdiction over the Property or any other address designated by the Secretary. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this Paragraph 16.

17. **Governing Law; Severability.** This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Second Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Second Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Second Note are declared to be severable.

18. **Borrower's Copy.** Borrower shall be given one conformed copy of the Second Note and this Security Instrument.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

19. **Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's Notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee

for benefit of Lender only, to be applied to the sums secured by this Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this Paragraph 19, except as provided in the First Security Instrument.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by this Security Instrument is paid in full.

20. Foreclosure Procedure. If Lender requires immediate payment in full under Paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Paragraph 20, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give Borrower notice of sale in the manner provided in Paragraph 16. Lender shall publish a notice of sale and shall sell the Property at the time and place and under the terms specified in the notice of sale. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

21. Lien Priority. The full amount secured by this Security Instrument shall have a lien priority subordinate only to the full amount secured by the First Security Instrument.

22. Adjustable Rate Feature. Under the Note, the initial stated interest rate of Two and 169/1000's percent (2.169%) which accrues on the unpaid principal balance ("Initial Interest Rate") is subject to change, as described below. When the interest rate changes, the new adjusted interest rate will be applied to the total outstanding principal balance. Each adjustment to the interest rate will be based upon the One-Month London Interbank Offered Rate ("LIBOR") as made available in the "Money Rates" section of the Wall Street Journal ("Index") plus a margin. If the Index is no longer available, Lender will be required to use any index prescribed by the Department of Housing and Urban Development. The new index will have a historical movement substantially similar to the original index, and the new index and margin will result in an annual percentage rate that is substantially similar to the rate in effect at the time the original index becomes unavailable.

Lender will perform the calculations described below to determine the new adjusted interest rate. The interest rate may change on the first day of March 1, 2014, and on that day of each succeeding year, X the first day of each succeeding month ("Change Date") until the loan is repaid in full.

The value of the Index will be determined, using the most recent Index figure available thirty (30) days before the Change Date ("Current Index"). Before each Change Date, the new interest rate will be calculated by adding a margin to the Current Index. The sum of the margin plus the Current Index, subject to the rate limitations below, will be called the "Calculated Interest Rate" for each Change Date. The Calculated Interest Rate will be compared to the interest rate in effect immediately prior to the current Change Date (the "Existing Interest Rate").

Annually Adjusting Variable Rate Feature - The Calculated Interest Rate will never increase or decrease by more than two percentage points (2.0%) on any single Change Date. The interest rate

will never be more than five percentage points (5.0%) higher or lower than the Initial Interest Rate stated in Paragraph 2 of the Note.

X **Monthly Adjusting Variable Rate Feature** - The Calculated Interest Rate will never increase above 12.169%.

The Calculated Interest Rate will be adjusted if necessary to comply with the rate limitation(s) described above and will be in effect until the next Change Date. At any Change Date, if the Calculated Interest Rate equals the Existing Interest Rate, the interest rate will not change.

23. **Release** Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under applicable law.

24. **Obligatory Loan Advances.** Lender's responsibility to make Loan Advances under the terms of the Loan Agreement, including Loan Advances of principal to Borrower as well as Loan Advances for interest, MIP, Servicing Fees, and other charges shall be obligatory.

25. **Waivers.** Borrower relinquishes all right of dower and curtesy in the Property.

26. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Check all riders that are applicable.]

<input type="checkbox"/>	Condominium Rider	<input type="checkbox"/>	PUD-Rider
<input type="checkbox"/>	Shared Appreciation Rider	<input type="checkbox"/>	Other

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses: _____


 LINDA MISHOE PETRAITIS (BORROWER)

Notary Acknowledgement

State of Hawaii
County of Mau

On January 03, 2014, before me personally appeared Linda Mishoe Petraitis, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he/~~she~~/they executed the same as his/~~her~~/their free act and deed.

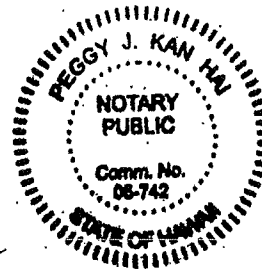
Given under my hand and official seal on January 03, 2014.

Signature Peggy J. Kan Hai [SEAL]

Peggy J. Kan Hai
(Typewritten Name)

Title of the Officer: Notary Public

My Commission Expires: 11/27/2017



Doc. Date: 1/3/2014 # Pages: 10
Notary Name: Peggy J. Kan Hai 2nd Class
Doc. Description: Second Mortgage (Name or Num)

Peggy J. Kan Hai 1/3/2014
Notary Signature Date

Linda Mishoe Petraitis, a single person.

EXHIBIT A

Exhibit A to the Mortgage given on January 03, 2014, by Linda Mishoe Petraitis, as fee owner ("Borrower") to the Secretary of Housing and Urban Development, and whose address is 451 Seventh Street, S.W., Washington, D.C. 20410, ("Lender" or "Secretary"). The Property is located in the county of Maui, state of HI, and is described as follows:

Description of Property

Legal Description attached hereto as 'Exhibit A' and by this reference made a part hereof.

TMK: (2) 2-3-023-129

EXHIBIT "A"

All of that certain parcel of land situate at Omaopio, Kula, District of Makawao, Island and County of Maui, State of Hawaii, described as follows:

LOT 204-D, area 0.503 acre, more or less, as shown on Map 142, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 342 of Frank Gonsalves Correa;

Together with access to Kulamanu Circle, a public highway, across Lot 204-H, as shown on Map 142 of Land Court Application No. 342, as set forth by Land Court Order No. 160596, filed March 21, 2005.

Being land(s) described in Transfer Certificate of Title No. 807,977 issued to WALTER FRANK PETRAITIS and LINDA MISHOE PETRAITIS, husband and wife, as Tenants by the Entirety.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED WITH COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVED RIGHTS

GRANTOR : RIDGELINE HOMES, INC., a Hawaii corporation

GRANTEE : WALTER FRANK PETRAITIS and LINDA MISHOE PETRAITIS, husband and wife, as Tenants by the Entirety

DATED : June 1, 2006

FILED : Land Court Document No. 3436896

Subject to any and all liens and/or encumbrances of record.

KPA



STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

April 16, 2014 8:01 AM

Doc No(s) T-8871120
on Cert(s)
Issuance of Cert(s)



1 112 KLA
B-32447562

/s/ NICKI ANN THOMPSON
ASSISTANT REGISTRAR

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL PICKUP

R. CLAY SUTHERLAND, ESQ.
Attorney at Law, A Law Corporation
24 N. Church Street, Suite 408
Wailuku, Hawaii 96793

TG ACCOM 4599920

① 40

TITLE GUARANTY OF HAWAII HAS
FILED THIS DOCUMENT FOR RECORD
AS AN ACCOMMODATION ONLY. THIS
DOCUMENT HAS NOT BEEN
REVIEWED OR IN ANY WAY EXAMINED
AS TO ITS EFFECT ON REAL PROPERTY.

Total Number of Pages: 4

DURABLE GENERAL POWER OF ATTORNEY

1. GRANT OF POWERS: I, Linda Mishoe Petraitis, of Kula, MAUI, State of Hawaii, do hereby constitute and appoint my son, James Alexander Westbrook, of Studio City, California; with full power of substitution, my true and lawful attorney for me and in my name and for my use and benefit to perform and do all of the following:

2. COLLECT ASSETS: to ask, demand, sue for, collect, recover, and receive all sums of money, debts, dues, accounts, legacies, bequests, interest, dividends, annuities, and demands whatsoever, as are now or shall hereafter become due, owing, payable, or belonging to me, and to have, use, and take all lawful ways and means in my name or otherwise for the recovery thereof by suits, attachments, or otherwise, and to compromise and agree for the same and grant releases and discharges for the same;

3. DEAL WITH PROPERTY: to bargain, contract, agree for, buy, lease, sell, exchange, convey, demise, mortgage, hypothecate, and in any and every way and manner deal in and with lands, leaseholds, goods, merchandise, choses in action, and other property, real or personal or mixed, of all kinds, in possession or in action, upon such terms, covenants, and conditions as my attorney shall agree to; to release mortgages, pledges, or hypothecations on lands or chattels and to make, do, and transact my business of every kind or nature;

EXHIBIT "3"

3. EXECUTE INSTRUMENTS: for me and in my name and as my act and deed, to sign, seal, execute, deliver, and acknowledge such checks, promissory notes, deeds, leases and assignments of leases, covenants, indentures, agreements, mortgages, hypothecations, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases and satisfactions of mortgage, judgments and other debts, and such other instruments in writing of whatever kind or nature as may be necessary or proper in the premises; and also to deposit and to withdraw and to borrow for me and on my account sums of money from time to time; and for me and in my name to draw, accept, make, endorse, discount, or otherwise deal with bills of exchange, checks, promissory notes, or other securities for the payment of money;

4. ACCESS TO SAFE DEPOSIT BOXES: to have access to, and remove the contents from, or add to the contents of, any and all safe deposit boxes standing in my name;

5. VOTE SHARES: to exercise the voting privileges of any shares of stock or other voting interest of which I am the owner, and to do all other things respecting such shares of stock or interests, including the calling of meetings of directors or stockholders, and any other act or thing that I might or could do if personally present at any such meeting as owner of such shares or voting interests;

6. HOLD INSURANCE: to carry insurance as my attorney-in-fact deems advisable to protect my assets against any hazard, to claim the benefits or proceeds of such insurance on my behalf, to purchase medical benefits or payment options, to terminate or change beneficiaries or ownership, to assign rights, and to borrow or receive cash value with respect to any life insurance, annuity, mutual fund, or retirement benefit that I may own; provided, however, that my attorney-in-fact shall not be authorized under the foregoing to exercise any incidents of ownership over any policy or policies of life insurance insuring the life of my attorney-in-fact and of which I am the owner;

7. GIFT: to make gifts of cash or property, or the income thereof, in trust or outright, to family members, spouse, friends, and natural objects of my bounty and to make contributions to charitable organizations, provided, however, that my attorney-in-fact shall not have the power under the foregoing to use any asset of mine to satisfy any legal obligation of my attorney-in-fact or to provide for the support of any dependent of my attorney-in-fact unless such dependent shall include myself or those persons whom I am legally obligated to support; nor shall this entitle my attorney-in-fact to transfer property to my attorney-in-fact, except in a fiduciary relationship to me;

8. ESTABLISH TRUSTS: to create for my benefit and/or for the benefit of others who are the natural objects of my bounty revocable or irrevocable trusts, which trusts may extend beyond my disability or lifetime; to transfer to any such trust any of my assets or my interest in such assets; and to amend any such revocable trust from time to time, but not so as to increase the share of such trust that would thereafter pass to my attorney-in-fact or such person's spouse or children;

9. **PURCHASE FLOWER BONDS:** to purchase for me certain United States Treasury bonds, commonly known as "Flower Bonds," to borrow money and obtain credit in my name, and to pledge, mortgage, and assign any of my property for the purpose of purchasing said Flower Bonds and to make necessary arrangements for the safekeeping of such bonds;

10. **EXERCISE RIGHTS:** to exercise or release any powers of appointment, special or general, inter vivos or testamentary; to renounce or disclaim any interest acquired by me through testate or intestate succession or by inter vivos transfer, including the right to revoke a revocable trust;

11. **REPRESENT IN TAX MATTERS:** to prepare, sign, certify, and swear to tax returns of all kinds, to agree upon, settle, and compromise the amount of taxes payable by me and for that purpose to appear before the Commissioner and the District Director of Internal Revenue or either of them, or any of his or their deputies, and to appeal and prosecute to final conclusions appeals from assessments; and to do all or any of the foregoing acts or things either for me alone or jointly with others; to exercise any tax elections available to me under the Internal Revenue Code, including but not limited to the allocation of my GST exemption under Chapter 13 of the Internal Revenue Code to property conveyed by me or by my attorney-in-fact during my lifetime; and to disclaim any inter vivos or testamentary transfers of any property to me, in accordance with the Internal Revenue Code and applicable Hawaii law;

12. **HEALTH CARE MATTERS:** to receive from physicians, surgeons, hospitals, other medical or nursing care providers, or their employees or agents, any privileged or confidential medical documents and information regarding me; to grant releases for such documents and information; and to waive on my behalf any physician-patient or other privilege, if my attorney-in-fact deems it advisable for any reason; to sign any documents, waivers, or releases relating to my health care, medical records or medical insurance including, but not limited to, a waiver or release from liability required by a hospital, physician or other health care provider and any document related to decisions to refuse treatment or leave a hospital or other facility against medical advice; to give or withhold consent to my placement in a hospital, nursing home or other health care facility; to employ and discharge medical personnel; to give or withhold consent to the administration of medication, surgical procedures or other professional care, counsel, treatment or services, and to withdraw such consent whether initially granted by me or by my attorney-in-fact; to give or withhold consent to specific medical or surgical measures; to commence and conduct legal process to enforce the authority of my attorney-in-fact under this durable power of attorney.

GIVING AND GRANTING unto my said attorney-in-fact full power and authority to do and perform all or every act and thing whatsoever requisite or necessary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present, and I hereby ratify and confirm all that my said attorney-in-fact and any substitute or substitutes lawfully does or causes to be done by virtue of these presents;

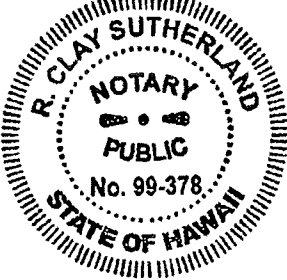
This power of attorney shall take effect immediately and shall not be affected by the disability of the principal.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of April, 2014.

Linda Mishoe Petraitis

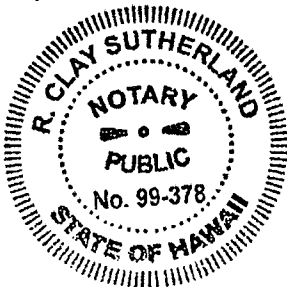
STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 4th day of April, 2014, before me personally appeared Linda Mishoe Petraitis, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed.



Notary Public, State of Hawaii
Type or Print Name of Notary: R. Clay Sutherland
My commission expires: 6/1/2015

HAWAII NOTARY CERTIFICATION	
Date of document: <u>Durable Power of Attorney</u>	# Pages: -04-
Name of Notary: <u>R. Clay Sutherland</u>	<u>Second</u> Circuit
Document Description: Durable General Power of Attorney	
<u>[Signature]</u> Notary Signature	<u>4/4/14</u> Date



7/10
10/1



STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

April 16, 2014 8:01 AM

Doc No(s) T-8871121

on Cert(s) 807977

Issuance of Cert(s) 1076899



1 212 KLA
B-32447562

/s/ NICKI ANN THOMPSON
ASSISTANT REGISTRAR

Conveyance Tax: \$0.00

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL PICKUP

R Clay Sutherland
A Law Corporation
173 Hoohana Street, Suite 101
Wailuku, Maui, Hawaii 96793

TG ACCOM 4599920

TITLE GUARANTY OF HAWAII HAS
FILED THIS DOCUMENT FOR RECORD
AS AN ACCOMMODATION ONLY. THIS
DOCUMENT HAS NOT BEEN
REVIEWED OR IN ANY WAY EXAMINED
AS TO ITS EFFECT ON REAL PROPERTY.

(2) 40

ka

TAX KEY NO.: (2) 2-3-023-129

Total Number of Pages: 4

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

LINDA MISHOE PETRAITIS, widow, whose post office address is 79 Kulamanu Circle, Kula, Maui, Hawaii 96790, hereinafter called the "Grantor", in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to the Grantor paid by JAMES ALEXANDER WESTBROOK, whose address is 440 Vantage Avenue, Apt. PH2, Studio City, CA 91604, hereinafter called the "Grantee", the receipt of which is hereby acknowledged, does hereby remise, release and quitclaim unto the Grantee, as a Tenant in Severalty (in Trust), all the property described in Exhibit "A" attached hereto and incorporated herein by reference.

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.

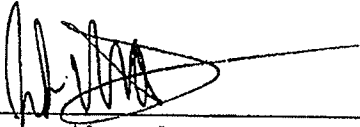
EXHIBIT "4"

TO HAVE AND TO HOLD the same, together with the improvements thereon and all rights, easements, privileges and appurtenances thereunto belonging or appertaining, unto the Grantee, according to the tenancy herein set forth, forever.

This conveyance and the covenants of the Grantor shall be jointly and severally binding upon the person or persons identified above as "Grantor" and the Grantor's successors and assigns, and shall run in favor of and inure to the benefit of the person or persons identified above as "Grantee" and the Grantee's heirs, successors and assigns and the heirs and assigns of the survivor of them. The use herein of the singular in reference to a party shall include the plural and the use of a pronoun of any gender shall include all genders. The term "person" shall mean and include an individual, partnership, association or corporation, as the context may require.

IN WITNESS WHEREOF, the Grantor has caused these presents to be duly executed this 7th day of April, 2014.

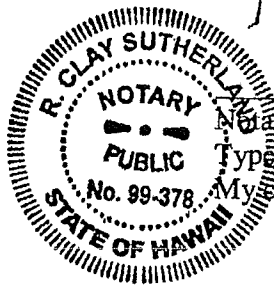
Linda Mishoe Petraitis

By  _____
James Alexander Westbrook, attorney-in-fact for
Linda Mishoe Petraitis

Grantor

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 7th day of April, 2014, before me personally appeared JAMES ALEXANDER WESTBROOK, as Attorney-in-Fact for LINDA MISHOE PETRAITIS, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as Attorney-in-Fact for said LINDA MISHOE PETRAITIS.



[Handwritten Signature]

Notary Public, State of Hawaii
Typed or Printed Name: R. Clay Sutherland
My Commission Expires: Aug 1, 2015

HAWAII NOTARY CERTIFICATION	
Date of document: <u>April 7, 2014</u>	# Pages: <u>4</u>
Name of Notary: <u>R. Clay Sutherland</u>	<u>Second</u> Circuit
Document Description: <u>Quitclaim Deed</u>	
<u><i>[Handwritten Signature]</i></u> Notary Signature	<u>4/7/14</u> Date

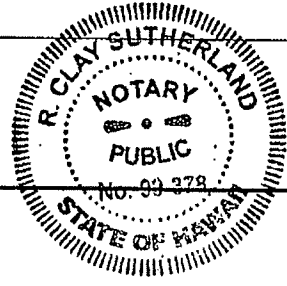


EXHIBIT "A"

All of that certain parcel of land situate at Omaopio, Kula, District of Makawao, Island and County of Maui, State of Hawaii, described as follows:

LOT 204-D, area 0.503 acre, more or less, as shown on Map 142, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 342 of Frank Gonsalves Correa;

Together with, access to Kulamanu Circle, a public highway, across Lot 204-H, as shown on Map 142 of Land Court Application No. 342, as set forth by Land Court Order No. 160596, filed March 21, 2005,

Being the property described in Transfer Certificate of Title No. 807,977 and being the premises acquired by Warranty Deed dated June 1, 2006, from Ridgeline Homes, Inc., a Hawaii Corporation, as Grantor, to Walter Frank Petraitis and Linda Mishoe Petraitis, husband and wife, as Grantee, filed in the State of Hawaii Office of Assistant Registrar recorded on June 6, 2006, as Document No. 3436896.

END OF EXHIBIT "A"
Tax Map Key No. (2) 2-3-023-129

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

JULIE BETH BEAN,

Plaintiff,

vs.

JAMES ALEXANDER WESTBROOK,
PLAZA HOME MORTGAGE, INC.,
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. (MERS),
solely as Nominee for Plaza Home Mortgage,
Inc., and its Successors and Assigns,
SECRETARY OF THE U.S. DEPARTMENT
OF HOUSING AND URBAN
DEVELOPMENT; JOHN DOES 1-10, JANE
DOES 1-10; DOE TRUST ENTITIES 1-10;
DOE CORPORATIONS 1-10, DOE
PARTNERSHIPS 1-10, DOE ENTITIES 1-10,
DOE GOVERNMENTAL AGENCIES 1-10,

Defendants.

CIVIL NO. _____
(Other Civil Action)

SUMMONS

TO: DEFENDANT JAMES ALEXANDER WESTBROOK
DEFENDANT PLAZA HOME MORTGAGE, INC.
DEFENDANT MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
INC. (MERS), solely as Nominee for Plaza Home Mortgage, Inc., and its
Successors and Assigns
DEFENDANTS JOHN DOES 1-10, JANE DOES 1-10; DOE TRUST ENTITIES
1-10; DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, DOE
ENTITIES 1-10, DOE GOVERNMENTAL AGENCIES 1-10

You are hereby summoned and required to file with the court and serve upon
WRIGHT & KIRSCHBRAUN, A Limited Liability Law Company, 1885 Main Street, Suite 108,
Wailuku, HI 96793, Telephone Number 808-244-6644, an answer to the Complaint, which is
attached hereto. This action must be taken by you within twenty (20) days after service of this
Summons upon you, exclusive of the day of service.

If you fail to make your answer within the twenty (20) day time limit, judgment by default will be taken against you for the relief demanded in said Complaint. If you fail to obey this summons this may result in an entry of default and default judgment.

TO: DEFENDANT SECRETARY OF THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

You are hereby summoned and required to file with the court and serve upon WRIGHT & KIRSCHBRAUN, A Limited Liability Law Company, 1885 Main Street, Suite 108, Wailuku, HI 96793, Telephone Number 808-244-6644, an answer to the Complaint, which is attached hereto. This action must be taken by you within sixty (60) days after service of this Summons upon you, exclusive of the day of service.

If you fail to make your answer within the sixty (60) day time limit, judgment by default will be taken against you for the relief demanded in said Complaint. If you fail to obey this summons this may result in an entry of default and default judgment.

Pursuant to Rule 4(b) of the Hawaii Rules of Civil Procedure, this summons shall not be delivered between the hours of 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge of the Second Circuit Court permits, in writing on the Summons, personal delivery during those hours.

DATE ISSUED: Wailuku, Maui, Hawaii; JUL - 1 2014 _____

~~/sgd/ K. MAEDA (seal)~~
Clerk of the above-entitled Court

WRIGHT & KIRSCHBRAUN
A Limited Liability Law Company

DEBORAH K. WRIGHT 4444-0
KEITH D. KIRSCHBRAUN 4971-0
DOUGLAS R. WRIGHT 9643
1885 Main Street, Suite 108
Wailuku, HI 96793
Telephone: 808-244-6644
Facsimile: 808-244-1013
Email: wrightkirsch@aol.com

FILED

2014 JUL -1 PM 3:48

K. MAEDA, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

Attorneys for Plaintiff
JULIE BETH BEAN

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
STATE OF HAWAII

JULIE BETH BEAN,
Plaintiff,

vs.

JAMES ALEXANDER WESTBROOK,
PLAZA HOME MORTGAGE, INC.,
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. (MERS),
solely as Nominee for Plaza Home Mortgage,
Inc., and its Successors and Assigns,
SECRETARY OF THE U.S. DEPARTMENT
OF HOUSING AND URBAN
DEVELOPMENT; JOHN DOES 1-10, JANE
DOES 1-10; DOE TRUST ENTITIES 1-10;
DOE CORPORATIONS 1-10, DOE
PARTNERSHIPS 1-10, DOE ENTITIES 1-10,
DOE GOVERNMENTAL AGENCIES 1-10,
Defendants.

) CIVIL NO. 14-1-0399 (2)
) (Other Civil Action)
)
) **NOTICE OF PENDENCY OF ACTION;**
) **DECLARATION OF DOUGLAS R.**
) **WRIGHT; AND EXHIBIT "1"**

NOTICE OF PENDENCY OF ACTION

I hereby certify that this is a full, true and
correct copy of the Original.

Clerk, Second Circuit Court

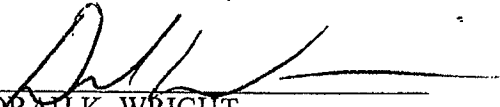
TO WHOM IT MAY CONCERN:

Plaintiff JULIE BETH BEAN ("PLAINTIFF"), by and through her counsel, Wright & Kirschbraun, A Limited Liability Law Company, pursuant to §634-51 of the Hawaii Revised Statutes ("HRS"), entitled *Recording of Notice of Pendency of Action*, does hereby give notice of the pendency of the above-entitled action.

Plaintiff commenced in the Circuit Court of the Second Circuit, State of Hawaii, an action against JAMES ALEXANDER WESTBROOK ("WESTBROOK"), whereby Plaintiff prays for, *inter alia*, injunctive and declaratory relief for Breach of Trust and Fiduciary Duty to set aside (1) the Power of Attorney dated April 4, 2014, executed by Linda Mishoe Petraitis improperly obtained by James Alexander Westbrook and recorded as Land Court Document No. T-8871120 on April 14, 2014 and (2) the improper transfer of real property (owned by Linda Mishoe Petraitis) to Westbrook, by Westbrook in breach of his fiduciary duty as attorney-in-fact for Linda Mishoe Petraitis, deceased, by Quitclaim Deed dated April 7, 2014 and recorded as Doc. No. T-8871121 on Cert(s) 807977 Issuance of Cert(s) 1076899 on April 16, 2014.

The Complaint filed in this action will affect the title or rights to possession of the property located at 79 Kulamanu Circle, Kula, Maui, Hawaii, more particularly identified as TMK No. (2) 2-3-023-129 (hereinafter "SUBJECT PROPERTY") and the rights of all persons claiming or having an interest in said Subject Property. The action and the properties that will be affected by the action are more particularly described in the Declaration of Douglas R. Wright and Exhibit "1", which are attached and incorporated herein by reference.

DATED: Wailuku, Maui, Hawaii, June 30, 2014.



DEBORAH K. WRIGHT
KEITH D. KIRSCHBRAUN
DOUGLAS R. WRIGHT

Attorneys for Plaintiff
JULIE BETH BEAN

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

JULIE BETH BEAN,
Plaintiff,

vs.

JAMES ALEXANDER WESTBROOK,
PLAZA HOME MORTGAGE, INC.,
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. (MERS),
solely as Nominee for Plaza Home Mortgage,
Inc., and its Successors and Assigns,
SECRETARY OF THE U.S. DEPARTMENT
OF HOUSING AND URBAN
DEVELOPMENT; JOHN DOES 1-10, JANE
DOES 1-10; DOE TRUST ENTITIES 1-10;
DOE CORPORATIONS 1-10, DOE
PARTNERSHIPS 1-10, DOE ENTITIES 1-10,
DOE GOVERNMENTAL AGENCIES 1-10,
Defendants.

) CIVIL NO. _____
) (Other Civil Action)
)
) **DECLARATION OF DOUGLAS R.
WRIGHT**

DECLARATION OF DOUGLAS R. WRIGHT

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

DOUGLAS R. WRIGHT declares that:

1. I have been licensed to practice in all state courts in the State of Hawaii and have been in practice in this jurisdiction since January of 2012. I am in all respects qualified and authorized to make this Declaration, which is based upon personal knowledge except where noted to be upon information and belief. The facts set forth herein are true and correct to the best of my knowledge, information and belief.

2. I represent Julie Beth Bean (hereinafter "PLAINTFF"). Plaintiff filed the above-entitled action against her brother, James Alexander Westbrook, ("WESTBROOK") who was the attorney-in-fact for their mother, Linda Mishoe Petraitis, now deceased. The Complaint prays for, *inter alia*, injunctive and declaratory relief and alleges breach of trust and fiduciary duty, fraud, undue influence, conversion, unjust enrichment, constructive trust, accounting and surcharge, tortious interference with an expected inheritance and/or prospective economic advantage, and in particular, that Westbrook improperly obtained and/or abused his agency pursuant to a durable power of attorney, ("POA") signed by Linda Mishoe Petraitis (hereinafter "MRS. PETRAITS") on April 4, 2014, while Mrs. Petraitis was admitted to the Intensive Care Unit at the Maui Memorial Medical Center with severe respiratory distress, pneumonia and acute kidney failure. The Durable Power of Attorney was recorded as Land Court Document No. T-8871120 on April 14, 2014.

3. Upon information and belief, on April 7, 2014 Mrs. Petraitis was taken off oxygen three days after she signed the Durable Power of Attorney in favor of her son, James Alexander Westbrook. On April 7, 2014, the third day after obtaining the power of attorney, Westbrook executed a Quitclaim Deed, transferring his mother's real property located at 79 Kulamanu Circle, Kula, Maui, Hawaii, more particularly identified as TMK No. (2) 2-3-023-129 (hereinafter "SUBJECT PROPERTY") to himself in breach of his trust and fiduciary duties as well as his authority pursuant to the POA. On April 16, 2014 the Quitclaim Deed was recorded as Land Court Doc. No. T-8871121 on Cert(s) 807,977 Issuance of Cert(s) 1076899. Mrs. Petraitis passed away on April 8, 2014.

4. The Subject Property at issue in this action, as described in the Complaint filed herein, is that property identified as Tax Map Key No. (2) 2-3-023-129, consisting

of approximately .503 acre of land, located in Kula, County of Maui, State of Hawaii, more particularly described in Exhibit "1", attached hereto and made a part hereof.

5. Plaintiff intends that all purchasers and encumbrances of the Property have constructive notice of this action and be bound by all judgments entered in this action.

6. This declaration is made in support of the foregoing Notice of Pendency of Action and in accordance with Hawaii Revised Statutes §634-51 and the Court procedures issued thereunder.

7. The facts set forth herein are true and correct to the best of my knowledge, information and belief.

I, DOUGLAS R. WRIGHT, DO DECLARE UNDER PENALTY OF LAW THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: Wailuku, Maui, Hawaii; June 30, 2014



DOUGLAS R. WRIGHT

TMK: (2) 2-3-023-129

EXHIBIT "1"

All of that certain parcel of land situate at Omaopio, Kula, District of Makawao, Island and County of Maui, State of Hawaii, described as follows:

LOT 204-D, area 0.503 acre, more or less, as shown on Map 142, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 342 of Frank Gonsalves Correa;

Together with access to Kulamanu Circle, a public highway, across Lot 204-H, as shown on Map 142 of Land Court Application No. 342, as set forth by Land Court Order No. 160596, filed March 21, 2005.

Being land(s) described in Transfer Certificate of Title No. 807,977 issued to WALTER FRANK PETRAITIS and LINDA MISHOE PETRAITIS; husband and wife, as Tenants by the Entirety.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED WITH COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVED RIGHTS

GRANTOR : RIDGELINE HOMES, INC., a Hawaii corporation

GRANTEE : WALTER FRANK PETRAITIS and LINDA MISHOE PETRAITIS, husband and wife, as Tenants by the Entirety

DATED : June 1, 2006

FILED : Land Court Document No. 3436896

Subject to any and all liens and/or encumbrances of record.

END OF EXHIBIT "1"

NATIONAL REGISTERED AGENTS OF HI, INC.

SERVICE OF PROCESS SUMMARY TRANSMITTAL FORM

To: SCOTT DENIKE, GENERAL COUNSEL
PLAZA HOME MORTGAGE, INC.
4820 EASTGATE MALL
SUITE 100
SAN DIEGO, CA 92121

SOP Transmittal # 525282130
800-592-9023 - Telephone

Entity Served: PLAZA HOME MORTGAGE, INC. (Domestic State: CALIFORNIA)

Enclosed herewith are legal documents received on behalf of the above captioned entity by National Registered Agents of HI, Inc. or its Affiliate in the State of HAWAII on this 07 day of July, 2014. The following is a summary of the document(s) received:

1. **Title of Action:** Julie Beth Bean, Pltf. vs. James Alexander Westbrook, et al. including Plaza Home Mortgage, Inc., Dfts.

2. **Document(s) Served:** COMPLAINT
Other: Exhibit(s)/Summons/Notice/Declaration

3. **Court of Jurisdiction/Case Number:** Circuit Court of the Second Circuit, HI
Case # 14103992

4. **Amount Claimed, if any:** N/A

5. **Method of Service:**

Personally served by: Process Server ___ Deputy Sheriff ___ U. S Marshall
___ Delivered Via: ___ Certified Mail ___ Regular Mail ___ Facsimile
___ Other (Explain):

6. **Date and Time of Receipt:** 07/07/2014 11:40:00 AM CST

7. **Appearance/Answer Date:** Within 20 days after service of this summons on you, exclusive of day of service

8. **Received From:** Deborah K. Wright
1885 Main Street
Suite 108
Wailuku, HI 96793

9. **Federal Express Airbill #** 770556025782

10. **Call Made to:** Not required

11. **Special Comments:**

SOP Papers with Transmittal, via Fed Ex 2 Day

Image SOP

Email Notification, SCOTT DENIKE SDENIKE@PLAZAHOMEMORTGAGE.COM

Email Notification, KATHY CLARK kathy.clark@plazahomemortgage.com

REMARKS : Please note the process server underlined and/or highlighted the entity being served prior to receipt by CT.

NATIONAL REGISTERED AGENTS OF HI, INC.

Copies To:

Transmitted by Amy McLaren

The information contained in this Summary Transmittal Form is provided by National Registered Agents of HI, Inc. for informational purposes only and should not be considered a legal opinion. It is the responsibility of the parties receiving this form to review the legal documents forwarded and to take appropriate action.

ORIGINAL



Hawai'i State Judiciary Ho'ohiki

Hawai'i State Judiciary's Public Access to Court Information

[Print](#) | [Help](#) | [New Search](#) | [Exit](#)

Non-Criminal Case Information Screen

2CC14-1-000399

Case Title: JULIE BETH BEAN VS JAMES A WESTBROOK ETAL

Initiation Date: 07-01-2014

Initiation Type: P

Confidential Code: N

Initiator I.D.: A4971

Division: 2C02

Court: C

Cause of Action: OTHR CIVL ACTN

Nature of Action: 02599

Section Code:

Trial Type:

Trial Judge:

Court Costs: 0000000000

Consolidation Code:

Case Termination:

Case Termination Date: 00-00-0000

Case Disposition:

Orig. Agency:

Lower Court Case:

Taxation Dist.:

Tax Appeal Source:

Gen. Ex. Tax Amt.: 0000000000

Gen. Ex. Tax No.:

Tax Key:

Property Location:

Comments:

Party List

Document List

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EXHIBIT B



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JULIE BETH BEAN VS JAMES A WESTBROOK ETAL

2CC14-1-000399

Seq.	Doc Type	Document Title	Date/Time	Filing Party
0000001		COMPLAINT FOR TEMPORARY AND PERMANENT INJUNCTION, DECLARATION RELIEF, BREACH OF TRUST AND FIDUCIARY DUTY AND OTHER RELIEF; EXHIBITS "1" TO "4"; SUMMONS	07/01/2014 15:47	KIRSCHBRAUN, KEITH DONALD
0000002		NOTICE OF PENDENCY OF ACTION; DECLARATION OF DOUGLAS R. WRIGHT; AND EXHIBIT "1"	07/01/2014 15:48	KIRSCHBRAUN, KEITH DONALD
0000003	RAS	RETURN AND ACKNOWLEDGMENT OF SERVICE (SERVED - SECRETARY OF THE U.S. DEPARTMENT THRU ANN YUUKI)	07/10/2014 14:54	WRIGHT, DOUGLAS RUSSELL
0000004	RAS	RETURN AND ACKNOWLEDGMENT OF SERVICE (SERVED - PLAZA HOME MORTGAGE THRU JO KAMAE BRYNE)	07/10/2014 14:54	WRIGHT, DOUGLAS RUSSELL
0000005		SUBMISSION OF ORIGINAL AFFIDAVIT OF SERVICE FOR MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. SOLELY AS NOMINEE FOR PLAZA HOME MORTGAGE, INC., AND ITS SUCCESSORS AND ASSIGNS RA: SHARON HOSTKAMP OR ANY DESIGNATED AGENT (RE: COMPLAINT FOR TEMPORARY AND PERMANENT INJUNCTION, DECLARATORY RELIEF, BREACH OF TRUST AND FIDUCIARY DUTY AND OTHER RELIEF; EXHIBITS 1-4;ETC.....	07/24/2014 15:04	WRIGHT, DEBORAH K.

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CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of DEFENDANT PLAZA HOME MORTGAGE INC.'S NOTICE OF REMOVAL OF CIVIL ACTION was served on the following at their last known addresses:

	Served Electronically through CM/ECF	Mailed
DEBORAH K. WRIGHT KEITH D. KIRSCHBRAUN DOUGLAS R. WRIGHT Wright & Kirschbraun 1885 Main Street, Suite 108 Wailuku HI 96793		8/6/14
Mortgage Electronic Registration Systems, Inc. 1818 Library Street, #300 Reston, Virginia 20190		8/6/14
U.S. Department of Housing and Urban Development Associate General Counsel for Litigation 451 7th Street S.W., Rm. 10258 Washington, DC 20410		8/6/14

DATED: Honolulu, Hawai`i, August 6, 2014.

 /s/ Malia E. Kakos
JUDY A. TANAKA
MALIA E. KAKOS
MAILE OSIKA

Attorneys for Defendant
PLAZA HOME MORTGAGE, INC.