



*First American Title*TM

CLTA Form No. 1 – Litigation Guarantee

ISSUED BY

First American Title Insurance Company

Guarantee

GUARANTEE NUMBER

50083215-800988

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, AND THE GUARANTEE CONDITIONS ATTACHED HERETO AND MADE A PART OF THIS GUARANTEE,

FIRST AMERICAN TITLE INSURANCE COMPANY

a Nebraska corporation, herein called the Company

GUARANTEES

the Assured named in Schedule A of this Guarantee

against loss or damage not exceeding the Amount of Liability stated in Schedule A sustained by the Assured by reason of any incorrectness in the Assurances set forth in Schedule A.

Dated: November 03, 2023

First American Title Insurance Company

Dennis J. Gilmore
President

Greg L. Smith
Secretary

Issued by:



TITLE GUARANTY
HAWAII

Title Guaranty of Hawaii, LLC

235 Queen Street
Honolulu Hawaii 96813
Telephone (808) 533-6261
Fax (808) 521-0221
Email title@tghawaii.com

EXCLUSIONS FROM COVERAGE

Except as expressly provided by the assurances in Schedule A, the Company assumes no liability for loss or damage by reason of the following:

- (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the Land.
- (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the Public Records (1) that are created, suffered, assumed or agreed to by one or more of the Assureds; or (2) that result in no loss to the Assured.
- (c) Defects, liens, encumbrances, adverse claims or other matters not shown by the Public Records.
- (d) The identity of any party shown or referred to in any of the schedules of this Guarantee.
- (e) The validity, legal effect or priority of any matter shown or referred to in any of the schedules of this Guarantee.
- (f) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the Public Records.
- (g) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the Public Records.

GUARANTEE CONDITIONS

1. Definition of Terms.

The following terms when used in the Guarantee mean:

- (a) the "Assured": the party or parties named as the Assured in Schedule A, or on a supplemental writing executed by the Company.
- (b) "Land": the Land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "Land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "Mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "Public Records": those records established under Hawaii statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "Date of Guarantee": the Date of Guarantee set forth in Schedule A.
- (f) "Amount of Liability": the Amount of Liability as stated in Schedule A.

2. Notice of Claim to be Given by Assured.

The Assured shall notify the Company promptly in writing in case knowledge shall come to the Assured of any assertion of facts, or claim of title or interest that is contrary to the assurances set forth in Schedule A and that might cause loss or damage for which the Company may be liable under this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of the Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

3. No Duty to Defend or Prosecute.

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

4. Company's Option to Defend or Prosecute Actions; Duty of Assured to Cooperate.

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

- (a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in Paragraph 4 (b), or to do any other act which in its opinion may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.
- (b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of the Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.
- (c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly

GUARANTEE CONDITIONS (continued)

reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

- (d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, the Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the Assured for this purpose. Whenever requested by the Company, the Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A or to prevent or reduce loss or damage to the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

5. Proof of Loss or Damage.

- (a) In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Assured furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.
- (b) In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this paragraph shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce

other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

6. Options to Pay or Otherwise Settle Claims: Termination of Liability.

In case of a claim under this Guarantee, the Company shall have the following additional options:

- (a) To pay or tender payment of the Amount of Liability together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.
- (b) To pay or otherwise settle with the Assured any claim assured against under this Guarantee. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment or tender of payment and that that the Company is obligated to pay; or
- (c) To pay or otherwise settle with other parties for the loss or damage provided for under this Guarantee, together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment and that the Company is obligated to pay.
- (d) Upon the exercise by the Company of either of the options provided for in 6 (a), (b) or (c) of this paragraph the Company's obligations to the Assured under this Guarantee for the claimed loss or damage, other than the payments required to be made, shall terminate, including any duty to continue any and all litigation initiated by the Company pursuant to Paragraph 4.

7. Limitation of Liability.

- (a) This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in Schedule A and only to the extent herein described, and subject to the Exclusions From Coverage of this Guarantee.

GUARANTEE CONDITIONS (continued)

- (b) If the Company, or the Assured under the direction of the Company at the Company's expense, removes the alleged defect, lien or, encumbrance or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.
- (c) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom.
- (d) The Company shall not be liable for loss or damage to the Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

8. Reduction of Liability or Termination of Liability.

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the Amount of Liability under this Guarantee pro tanto.

9. Payment of Loss.

- (a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.
- (b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions, the loss or damage shall be payable within thirty (30) days thereafter.

10. Subrogation Upon Payment or Settlement.

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

11. Arbitration.

Provided that this does not supersede Hawaii's Uniform Arbitration Act, Hawaii Revised Statutes, Chapter 658A, either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Subject to the provisions of Hawaii Revised Statutes, Chapter 658A, arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) shall be entered in any court having jurisdiction thereof.

12. Liability Limited to This Guarantee; Guarantee Entire Contract.

- (a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.
- (b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.
- (c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

13. Severability

In the event any provision of this Guarantee, in whole or in part, is held invalid or unenforceable under applicable law, the Guarantee shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

GUARANTEE CONDITIONS (continued)

14. Choice of Law; Forum

(a) Choice of Law: The Assured acknowledges the Company has underwritten the risks covered by this Guarantee and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of Guaranties of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims that are adverse to the Assured and to interpret and enforce the terms of this Guarantee. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Assured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

15. Notices, Where Sent.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at **1 First American Way, Santa Ana, CA 92707, Attn: Claims Department.**

SCHEDULE A

File No.: 7311445242

Amount of Liability: \$50,000.00

Date of Guarantee: November 03, 2023 at 8:00 a.m. Fee: \$600.00

1. Name of Assured:

COUNTY OF KAUAI

2. The estate or interest in the Land that is the subject of this Guarantee is:

FEE SIMPLE

3. The Land referred to in this Guarantee is situated in the State of Hawaii, County of Kauai, and is described as follows:

See Exhibit "A"

4. This Litigation Guarantee is furnished solely for the purpose of facilitating the filing of an action to foreclose on delinquent Real Property Taxes referred to in Paragraph 1 of Schedule B Part I. It shall not be used or relied upon for any other purpose.

5. ASSURANCES:

According to the Public Records as of the Date of Guarantee,

a. Title to the estate or interest is vested in:

DAVIN KIYOSHI PONCE, unmarried, as Tenant in Severalty, as Fee Owner

b. Except for the matters shown in Schedule B, there are no defects, liens, encumbrances or other matters affecting title to the estate or interest in the land shown in Schedule A, which matters are not necessarily shown in the order of their priority.

c. The current interest holders claiming some right, title or interest by reason of the matters shown in Part II of Schedule B are shown therein. The vestee named herein and parties claiming to have some right, title or interest by reason of the matters shown in Part II of Schedule B may be necessary parties defendant in an action, the nature of which is referred to above in paragraph 4.

d. The current interest holders claiming some right, title or interest by reason of the matters shown in part I of Schedule B may also be necessary parties defendant in an action, the nature of which is referred to above in paragraph 4. However, no return address for mailing after recording is shown in Schedule C as to those current interest holders.

e. The return address for mailing after recording, if any, as shown on each document referred to in Part II of Schedule B by specific recording information, and as shown on the document(s) vesting title as shown above in paragraph 5(a), are as shown in Schedule C.

SCHEDULE B

Defects, liens, encumbrances or other matters affecting title:

PART I

1. Real Property Taxes, if any, that may be due and owing.

Tax Key: (4) 4-6-019-013 Area Assessed: 14,239 sq. ft.

Real Property Tax Website: [\(4\) 4-6-019-013](#)

2. Improvement Assessments for Residential Refuse Collection, if any, that may be due and owing.

Tax Key: (4) 4-6-019-013 Area Assessed: 14,239 sq. ft.

Real Property Tax Website: [\(4\) 4-6-019-013](#)

3. Mineral and water rights of any nature.

4. UNRECORDED COLLATERAL AGREEMENT OR INDENTURE OF LEASE

LESSOR : DAVIN KIYOSHI PONCE, unmarried

LESSEE : MARGARET K. PONCE, unmarried

DATED : March 7, 2014

TERM : Commencing on April 1, 2014, and ending on March 31, 2029

SHORT FORM LEASE, dated March 7, 2014, recorded as Document No. [A-51900649](#).

SCHEDULE B CONTINUED

5. NOTICE OF MEDICAL ASSISTANCE LIEN

IN FAVOR OF : STATE OF HAWAII, DEPARTMENT OF HUMAN SERVICES

DATED : June 8, 2016
RECORDED : Document No. [A-60160627](#)
AMOUNT : \$103,798.71

6. TRANSFER ON DEATH DEED

DATED : July 14, 2020
RECORDED : Document No. [A-76290675](#)

TRANSFEROR : DAVIN KIYOSHI PONCE, single

DESIGNATED

BENEFICIARY : DAVIN KIYOSHI PONCE, as Trustee of the Davin Kiyoshi Ponce Kolohala Road Property Trust, dated July 14, 2020, with full powers to sell, mortgage, lease or otherwise deal with the land, and CYNTHIA PONCE MARUGAME, unmarried

7. MORTGAGE

MORTGAGOR : DAVIN KIYOSHI PONCE, Single

MORTGAGEE : DAVIN KIYOSHI PONCE, as Trustee of the Davin Kiyoshi Ponce Kolohala Road Property Trust dated July 14, 2020, with full powers to sell, mortgage, lease or otherwise deal with the land, and CYNTHIA PONCE MARUGAME, unmarried

DATED : July 14, 2020
RECORDED : Document No. [A-76290677](#)
AMOUNT : \$500,000.00

SCHEDULE B CONTINUED

8. TAX LIEN

BY : REAL PROPERTY TAX DIVISION, DEPARTMENT OF FINANCE,
COUNTY OF KAUAI

AGAINST : DAVIN K. PONCE and MARGARET K. PONCE

DATED : October 17, 2023

RECORDED : Document No. [A-86980708](#)

AMOUNT : \$27,015.85

SCHEDULE B

PART II

NONE

END OF SCHEDULE B

SCHEDULE C

ADDRESSES

NAME : DAVIN KIYOSHI PONCE
 ADDRESS : 4770 KOLOHALA ROAD
 KAPAA, HAWAII 96746
 RECORDED : Document No. [A-51900648](#)

NAME : MARGARET K. PONCE
 C/O : 4762 KOLOHALA ROAD
 ADDRESS : KAPAA, HAWAII 96746
 RECORDED : Document No. [A-51900649](#)

NAME : STATE OF HAWAII, DEPARTMENT OF HUMAN SERVICES
 C/O : CIVIL RECOVERIES DIVISION/DHS
 ADDRESS : 425 QUEEN STREET
 HONOLULU, HAWAII 96813
 RECORDED : Document No. [A-60160627](#)

NAME : CYNTHIA PONCE MARUGAME,
 ADDRESS : 1379 HUNAKAI STREET, #3
 HONOLULU, HAWAII 96813
 RECORDED : Document No. [A-76209675](#)

NAME : DAVIN KIYOSHI PONCE, AS TRUSTEE
 ADDRESS : 4762 KOLOHALA ROAD
 KAPAA, HAWAII 96746
 RECORDED : Document No. [A-76290677](#)

NAME : REAL PROPERTY TAX DIVISION, DEPARTMENT OF FINANCE,
 COUNTY OF KAUAI
 C/O : REAL PROPERTY TAX COLLECTION
 ADDRESS : 4444 RICE STREET, SUITE 463
 LIHUE, HAWAII 96766
 RECORDED : Document No. [A-86980708](#)

SCHEDULE C CONTINUED

END OF SCHEDULE C

GENERAL NOTES

1. There is hereby omitted from any covenants, conditions and reservations contained herein any covenant or restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law. Lawful restrictions under state or federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

EXHIBIT "A"

All of that certain parcel of land situate at Kapaa, District of Puna, Island and County of Kauai, State of Hawaii, being LOT 6 of the "LEE WING TRACT", as shown on File Plan Number 352, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 14,239 square feet, more or less.

BEING THE PREMISES ACQUIRED BY QUITCLAIM DEED

GRANTOR : MARGARET K. PONCE, Trustee of the Ponce Family Revocable Trust, under unrecorded trust agreement dated December 12, 1990, as amended

GRANTEE : DAVIN KIYOSHI PONCE, unmarried, as Tenant in Severalty

DATED : March 7, 2014

RECORDED : Document No. [A-51900648](#)

Together with an access and utilities easement over, across, under and through a portion of Lot 7, as granted by GRANT OF ACCESS AND UTILITIES EASEMENT, dated May 5, 2021, recorded as Document No. [A-78110426](#), more particularly described therein; and subject to the terms and provisions contained therein.