



R-71

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

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/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

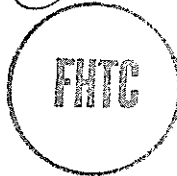
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LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup () To:

LAUNIUPOKO ASSOCIATES LLC
33 LONO AVE., SUITE 450
KAHULUI, HI 96732



20303121-4D

158185

ACCOMMODATION RECORDING
NO TITLE LIABILITY

TDW/85016.6

Total No. of Pages: (9)

TMK (2) 4-7-10:8, 9, and 10
TMK (2) 4-7-9:35, 36 and 37

SECOND AMENDMENT TO AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR MAHANALUA NUI SUBDIVISION AT LAUNIUPOKO

1. INTRODUCTION.

This Second Amendment is dated this 9th day of November, 2004 and is executed by LAUNIUPOKO ASSOCIATES, LLC, a Hawaii limited liability company, the principal place of business of which is 33 Lono Avenue, Suite 450, Kahului, Hawaii 96732 ("Declarant").

This Second Amendment amends the Amended and Restated Declaration of Covenants, Conditions and Restrictions dated July 13, 1999, recorded in the State of Hawaii Bureau of Conveyances as Document No. 99-114891, as amended by First Amendment dated February 24, 2003, recorded as Document No. 2003-

038050 (collectively the "Declaration"). This Second Amendment is executed and recorded for the purposes of (a) identifying additional lots within Phase IV of Mahanalua Nui Subdivision which shall be subject to the Declaration pursuant to Declarant's powers reserved under Section 7 of the Declaration pursuant to the powers reserved to it under Section 10.04(e) of the Declaration; and (b) adopting additional terms and restrictions which will be applicable to the Properties in said Phase IV.

The Second Amendment also amends that certain Declaration of Restrictive Covenants, dated November 25, 1998, recorded in said Bureau as Document No. 98-186637.

2. AMENDMENTS AND ADDITIONS.

The following paragraph shall fully replace their corresponding paragraphs within the Declaration or where no corresponding paragraph exists shall constitute an addition to the Declaration:

2.06 A "Property" means each of lots numbered 1 through 32, inclusive and 36 through 40 of Phase I and II including sub-lots and/or condominium apartments or partitions thereof; Lots numbered 41-A, 41-B, 41-L and 41-M of Phase I and II including sub-lots and/or condominium apartments or partitions thereof; and Lots 1 through 41 of Phase III including sub-lots and/or condominium apartments or partitions thereof; and Lots numbered 1 through 36 of Phase IV including sub-lots and/or condominium apartments or partitions thereof, all as shown on the Plan (defined below) and any other lots added to this Declaration by Declarant pursuant to Section 7 below.

If any Property in the future shall be divided into two or more separate parcels, condominium apartments or other divisions each of which shall be capable of being owned and conveyed in fee simple as a separate and discrete unit of ownership, each such parcel, unit or division shall be deemed to be a separate "Property" for all purposes under this Declaration, from and after the effective date of such division.

2.09 The "Plan" means collectively the following:

1. The subdivision entitled "Mahanalua Nui Subdivision Phase I" and "Mahanalua Nui Subdivision Phase II" dated December 2, 1998 (LUCA Nos. 4.730 and 4.731), respectively (including any

amendments), by Austin Tsutsumi & Associates, Inc., to which final subdivision approval was granted by the Department of Public Works and Waste Management of the County of Maui on May 27, 1999, and said plans shall be amended from time to time (collectively "Phase I and II"); and

2. The subdivision entitled "Mahanalua Nui Subdivision Phase III" revised November 26, 2001 (LUCA No. 4.827) (including any amendments), by Austin Tsutsumi & Associates, Inc., to which final subdivision approval was granted by the Department of Public Works and Waste Management of the County of Maui on December 19, 2002, as said plan shall be amended from time to time ("Phase III"); and

3. The subdivision entitled "Mahanalua Nui Subdivision Phase IV" dated October 8, 2004 (DSA No. 4.883) (including any amendments), by Austin, Tsutsumi & Associates, Inc., to which final subdivision approval was granted by the Department of Public Works and Environmental Management of the County of Maui on October 26, 2004, as said plan shall be amended from time to time ("Phase IV"); and

4. All other subdivision plans approved by the Department of Public Works and Environmental Management of the County of Maui and condominium maps recorded in the Bureau of Conveyances of the State of Hawaii the effect of which has been to subdivide (or establish condominium units within) lots within Mahanalua Nui.

5.06 Roadway Lots 37 through 44 in Phase IV. All Properties shall be granted a non-exclusive easement over Roadway Lots 37 through 44 in Phase IV as a common area of the subdivision, pursuant to Section 2.04 and 5 of the Declaration."

3. DESIGNATION OF DRAINAGE EASEMENTS AS ADDITIONAL COMMON AREAS. Pursuant to the authority reserved by Declarant in Section 2.04(iv), Declarant hereby designates the following easements as Common Areas: Drainage Basins described on the Plan of Phase IV as Easements D-39 through D-58 inclusive and Drainage Reserves described on the Plan of Phase IV as Easements DR-20 through DR-26, inclusive and DR-14A. The Association shall have the right to enter said easements from time to time with men and equipment for the purpose of clearing debris, vegetation and unauthorized structures from said areas which may reduce or interfere with the operation of said easement as a

drainage facility. The routine maintenance of vegetation and clearing of said areas and their maintenance as drainage facilities shall be the responsibility of the Owner(s) of the Property upon which the easement is located and the cost thereof shall be borne by said Owner(s). The standards for maintenance are set forth in Exhibit "A" hereto. If said Owner(s) shall fail to maintain any such area then the Association may exercise its easement rights set forth above and shall have the right to assess the cost thereof to said Owner(s) as a special assessment secured by the lien under Section 4.03 below. The cost of any work by the Association not caused by the act or omission of said Owner or the failure of the Owner to maintain the area as required herein shall be a common expense.

The Owner of each Property on which any such easement is located may place crops, orchards, landscaping, driveways and other structures within such easement provided that (a) such vegetation and structures shall not interfere with or impair the designated function of the area for managing storm water runoff; (b) such vegetation and structures shall not interfere with or impair the maintenance of said area in accordance with the standards set forth in Exhibit "A" hereto; and (c) all such vegetation and structures shall be approved by the Board of Directors of the Association (on such terms, conditions and restrictions as the Board may determine).

4. NEW PROVISIONS RELATING TO AGRICULTURAL USE REQUIREMENTS UNDER APPLICABLE LAW. In order to assure that Owners of Properties shall comply with applicable state and county laws concerning agricultural use of lands located within the areas zoned agricultural under Maui County Code Chapter 19 and designated agricultural under the state land use law HRS Chapter 205, the following additional covenants are added to Section 3 of the Declaration:

3.13 Farm Plan Requirements. Under rules and policies of the County of Maui in effect on the effective date of this Second Amendment, a farm plan is required in connection with the issuance of building permits for farm dwellings. A "farm plan" means a formal plan under which the Owner commits to proceed with bona fide agricultural operations on the Property, utilizing at least 50% of the land area within the Property as an active, bona fide and ongoing endeavor. "Agricultural operations" shall mean agricultural use as described in Maui County Code Chapter 19.30A, including but not limited to the cultivation of crops, orchard operations, animal husbandry and similar activities. Each Owner shall comply strictly with all applicable rules, regulations and policies in this regard.

3.14 Agricultural Use Restrictions. The restrictions on agricultural uses set forth in Section 3.01 shall not apply to the Properties located in Phase IV. The limitations on agricultural use restrictions set forth in Hawaii Revised Statutes Section 205-46 shall apply to all Phase IV Properties since the Phase IV lands were not subject to the reservations in Section 3.01 prior to July 8, 2003. If any other provision of the Declaration shall be found to violate said Section 205-46 such provision shall be deemed void insofar as it shall apply to any Phase IV Property.

These provisions this Section 4 have been adopted by the Declarant acting unilaterally under the authority reserved to the Declarant under Section 10.04(b) which authorizes the Declarant to amend the Declaration unilaterally for the purpose of complying with (i) any applicable law, rule or regulation of the State of Hawaii or the County of Maui, (ii) any requirement or condition of any governmental agency, or (iii) any governmental approval, permit or order affecting the subdivision.


5. DRIVEWAY LOCATIONS. All properties in Phase IV are subject to a restriction as to the permitted location of the driveway entrance at each Property line on the road abutting such Property. The location of the driveway entrance for each Property is shown on the Plan describing Phase IV. The Owner(s) of each Property shall comply strictly with said restriction and may not construct a driveway entrance on said Property in any other location without the approval of the County of Maui Department of Public Works and Environmental Management, Development Services Administration.

6. AMENDMENT OF DECLARATION OF RESTRICTIVE COVENANTS. The Declaration of Restrictive Covenants, dated November 25, 1998, recorded in the State of Hawaii Bureau of Conveyances as Document No. 98-186637 is hereby amended by excluding all lots in Phase IV from the restrictions in said documents. This exclusion is in accordance with Hawaii Revised Statutes Section 205-4.6.

7. CONCLUSION. In all other respects the Declaration shall remain in full force and effect.

This Declaration is executed the day and year first above written.

LAUNIUPOKO ASSOCIATES, LLC,
a Hawaii limited liability company

By: 
Peter K. Martin
Its: Member

"Declarant"

STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

On this 9th day of November, 2004, before me personally appeared Peter K. Martin, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

ls

Kristi Lynn E.S. Heoka
Notary Public, State of Hawaii
Printed Name: *Kristi Lynn E.S. Heoka*
My Commission Expires: *May 1, 2005*

EXHIBIT "A"

Operation and Maintenance Plan For Retention Basins 1 through 7 Mahanalua Nui Subdivision, Phase 4 Mahanalua Nui Homeowner's Association, Inc.

Operation and maintenance for Retention Basins 1 through 7 shall include the retention basins and vegetated swales that serve to control the storm water discharge into the retention basin. Mahanalua Nui Homeowner's Association, Inc. is the identified party to oversee and enforce the operation and maintenance of these basins and swales. Regular maintenance designed to ensure the long-term efficiency of the system shall include:

1. Sediment that accumulates in the catch basins, drain inlets, vegetated/concrete swales and retention basins shall be removed. The reclaimed sediment may be used for fill or as a supplement to topsoil.
2. Overgrown vegetation on the bottom, sides and benches of the retention basins shall be removed by means of mowing and/or herbicide spraying.
3. Overgrown vegetation along swales shall be removed by means of mowing and/or herbicide spraying.
4. Vegetative growth and accumulated silt deposits at all drainage outlets and at all overflow weirs shall be removed and kept clear at all times.
5. Mosquito infestation shall be controlled by removing stagnant water at bottom of retention basin.
6. After the occurrence of a major storm event, visually inspect the retention basins and swales for accumulation of sediment and debris. Sediment build-up and debris greater than two feet above the basin floor shall be removed immediately after the storm event. Removal of sediment and debris shall be done after it is deemed safe to accomplish remedial work.
7. All access paths to the retention basin shall be maintained and clear of obstructions. Vegetative growth and accumulated silt shall be removed. Loose gravel/dirt within access path shall be compacted to

maintain a safe route for vehicles used for the maintenance of the retention basins.

END OF EXHIBIT "A"