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R-70

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
NOV 17, 2004 08:01 AM
Doc No(s) 2004-231123



/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



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158185

ACCOMMODATION RECORDING
NO TITLE LIABILITY

TDW/85060.2

Total No. of Pages: (5)

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

SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MAHANALUA NUI SUBDIVISION AT LAUNIUPOKO, PHASE IV

This Supplemental Declaration 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").

RECITALS: Declarant is the owner of the land located at Launiupoko, Lahaina, Maui, Hawaii, described as follows: Lots 33, 34 and 35 of the Mahanalua Nui Subdivision Phase I, Subdivision File No. 4.730, and Lots 41-H, 41-I and 41-J of the Mahanalua Nui Subdivision Phase II, Subdivision File No. 4.731 as described

on subdivision plans entitled "Mahanalua Nui Subdivision Phase I" and "Mahanalua Nui Subdivision Phase II", final subdivision approval of which was granted by the Department of Public Works and Waste Management of the County of Maui on May 27, 1999 (the "Tract"). Declarant has consolidated all parcels within the Tract and resubdivided them into Agricultural Lots numbered 1 through 36 (herein called the "Lots") and Road Lots numbered 37 through 44, all to be known as Mahanalua Nui Subdivision Phase IV.

This Supplemental Declaration shall apply to each Lot from and after the date of final subdivision approval of Mahanalua Nui Subdivision Phase IV.

It is the Declarant's intention to establish certain procedures and safeguards for the purpose of encouraging the establishment and conduct of bona fide agricultural uses and enterprises on the Lots in accordance with the letter, spirit and intent of State and County laws, rules and regulations governing the uses of agricultural land.

The acceptance of a deed, agreement of sale, lease or other conveyance by any person of any Lot or any interest in any Lot within the subdivision will constitute acceptance of these covenants, regardless of whether or not said instrument is expressly made subject hereto. This Supplemental Declaration shall be binding upon and shall be enforceable against each owner, purchaser, tenant and occupant of all or any part of a Lot and their respective successors in interest and shall be deemed incorporated in each deed, lease or other instrument by which any right, title or interest in any lot is granted, devised or conveyed, whether or not expressly referred to therein.

DECLARATION: The Lots shall be subject to the following covenants, conditions and restrictions:

1. The owner of each Lot shall be required to prepare and submit to the Planning Director of the County of Maui a bona fide farm plan for review and approval, prior to applying for a building permit for the first farm dwelling on said owner's lot. A "farm plan" means a detailed plan under which the owner commits to proceed with bona fide agricultural operations on the Lot, utilizing at least 50% of the land area within the Lot as an active, bona fide and ongoing endeavor. "Agricultural operations" shall mean agricultural uses as described in the Maui County Code Chapter 19.30A, including but not limited to the cultivation of crops, orchard operations, animal husbandry and similar activities. Said owners shall file a copy of said farm plan with Declarant simultaneously with the filing with the Planning Director.

2. Not later than the time of said owner's submittal of the farm plan as required in Section 1 above, the owner shall deposit the sum of \$20,000.00 in cash in an escrow account established at First Hawaii Title Corporation, 33 Lono Avenue, Suite 240, Kahului, Hawaii 96732 (Diane Wanner), to be held in escrow pursuant to this Supplemental Declaration. Declarant may collect said escrow deposit at the time of said owner's purchase of the Lot from Declarant if said owner is the first purchaser, regardless of whether or not the said owner intends to construct a farm dwelling; and upon receipt, Declarant shall pay said funds to said escrow account at First Hawaii Title Corporation, to be held in escrow pursuant to this Supplemental Declaration.

3. If the Planning Director or Declarant shall have any objections to any aspect of the farm plan, the owner shall promptly make all required changes and shall promptly file them with the Planning Director, with a copy to Declarant.

4. Prior to applying for a building permit for the first farm dwelling on the Lot, the owner shall obtain the written approval of the Planning Director of the farm plan and shall forward the approval to Declarant.

5. The owner shall substantially and in good faith commence actual, bona fide agricultural operations as set forth in the farm plan prior to completion of construction of the first farm dwelling on the Lot. Said owner shall request the Planning Director to inspect said operations and to confirm in writing that said agricultural operations are commenced and are consistent with the approved farm plan and shall promptly forward a copy of said confirmation to Declarant. Declarant may in its discretion request additional documentary proof or may physically inspect the property to verify said owner's representations.

6. If by the end of ninety (90) days after the date of substantial completion of said farm dwelling (as evidenced by the publication of notice of completion under HRS Section 507-43 or other evidence of substantial completion established to Declarant's reasonable satisfaction) all of the following things shall have occurred: (a) the farm plan shall have been actively implemented as provided in paragraph 5 above; (b) the Planning Director shall have inspected and confirmed said operations in writing as provided in paragraph 5 above; (c) Declarant shall have received a copy of said confirmation, then Declarant shall instruct escrow to release the \$20,000.00 deposit back to said owner. If, however, the conditions of the preceding sentence shall not have been satisfied by ninety (90) days after said date of substantial completion of the first farm dwelling (time being of the essence), including any extension of said date which the Declarant in good faith may grant for good cause shown, the \$20,000.00 deposit shall be forfeited and Declarant shall instruct escrow to pay said funds to the Lahainaluna High School

Foundation for the use and benefit of the Agricultural Learning Center.

7. If for any reason the requirements of this Supplemental Declaration shall not have been met with respect to the first farm dwelling, then they shall apply to the development of a second farm dwelling on the Lot, including but not limited to the requirement of the \$20,000.00 escrow deposit and the submission, approval, implementation and confirmation of the farm plan.

8. In the event of any dispute or disagreement between the owner of any Lot and the Declarant with respect to any approval, disapproval or decision under this Supplemental Declaration, then either party may refer the matter to binding arbitration in Wailuku, Hawaii under expedited arbitration proceedings conducted by Dispute Prevention & Resolution, Inc. or other reputable alternative dispute resolution firm.

9. Reference herein to the "Planning Director" shall mean the County of Maui Planning Director or such members of the Planning Department staff to whom the Planning Director shall have delegated authority or responsibility in these matters.

10. Declarant may in its discretion transfer some or all of its authority and functions under this Supplemental Declaration to an assignee if Declarant shall no longer be in the development business in West Maui, and shall notify the Planning Director of any such assignment.

11. This Supplemental Declaration shall remain in full force and effect with respect to each Lot as long as said Lot shall be (a) zoned "agriculture" under the Maui County Zoning Code and (b) designated within the agricultural district under the State Land Use Law, HRS Chapter 205.

12. This Supplemental Declaration may be amended by Declarant in Declarant's discretion but only with the written approval of the Planning Director, recorded in the State of Hawaii Bureau of Conveyances.

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

LAUNIUPOKO ASSOCIATES, LLC

By: *Peter K. Martin*
Peter K. Martin
Its: Member

"Declarant"

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

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.

Kristilyn E. Neoka
Notary Public, State of Hawaii
Printed Name: Kristilyn E. Neoka
My Commission Expires: May 1, 2015

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