



R-1121 STATE OF HAWAII
BUREAU OF CONVEYANCES
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/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

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LAND COURT SYSTEM REGULAR SYSTEM

Return by Mail (X) Pickup () To:

Nakamoto, Okamoto & Yamamoto
187 Kapiolani Street
Hilo, HI 96720

TITLE OF DOCUMENT:

DECLARATION OF RESTRICTIVE COVENANTS

PARTIES TO THE DOCUMENT:

Declarant: BENJAMAS SEUNGSIRI, Trustee of the Benjamas Seungsiri Revocable Living Trust dated August 21, 2002, whose address is P.O. Box 11370, Hilo, Hawaii 96721.

Affects: [3] 1-4-2: 50 por.

This document contains 9 pages.

DECLARATION OF RESTRICTIVE COVENANTS

BENJAMAS SEUNGSIRI, Trustee of the Benjamas Seungsiri Revocable Living Trust dated August 21, 2002, whose address is P.O. Box 11370, Hilo, Hawaii 96721 (hereinafter "Declarant"), hereby establishes the following restrictive covenants relative to the use of the lands within Lots 2, 3, 4, 5, 6 and 7 of the Kapoho Land and Agriculture Subdivision at Kapoho, Puna, Hawaii, portion Tax Map Key No. [3] 1-4-2: 50 ("Property" or "Subdivision"), as more particularly described in Exhibit "A" attached hereto and incorporated by reference herein.

Declarant wishes to establish covenants, conditions and restrictions on the use of said property in order to develop a planned community.

Declarant hereby declares that each of the lots within the Subdivision, within the land described on Exhibit A attached hereto and incorporated by reference herein, shall be subject to these covenants, conditions and restrictions except for those lands in use or reserved for roadway, utility or access purposes or dedicated to the County of Hawaii or State of Hawaii for common use areas.

Covenants Applicable to All Land.

The following provisions shall apply to all land subject to these covenants.

1. **Permitted Uses.** All lots within the subdivision and any part thereof shall be used for farm dwellings and agricultural uses defined below and for ancillary uses thereto, and for no other use.
2. **Agricultural Uses.** The following agricultural uses are expressly permitted: propagation and cultivation of horticultural products, including floral and foliage products whether or not conducted in greenhouse or shadehouse structures. The following uses are not permitted: breeding or maintenance of any swine or roosters. Unless prohibited under any other provisions of these covenants, any other agricultural uses may be conducted, provided that said uses are otherwise in conformance with the provisions of these covenants.
3. **Prohibited Uses.** The following uses are prohibited, whether or not they are conducted for commercial purposes: the raising of roosters or fowl and swine.
4. **Pets.** Domestic pets, such as dogs, cats and fish may be maintained. Roosters, fowl or swine are not permitted. Dogs who are kept outdoors shall be housed in enclosed or fenced kennels or runs or completely fenced areas.
5. **Compliance with Law.** The use of lots subject to these covenants, the construction, erection or maintenance of any improvements on said lots shall be in full compliance with the laws, rules and regulations of the United States, County of Hawaii and State of Hawaii, including those related to hazardous materials, the rules and regulations of the State

Department of Health, County zoning and subdivision laws, grading ordinance, laws applicable to building codes, fire codes, electrical and plumbing codes. No work shall be commenced on the construction of any improvements until any applicable special management area permit or building permit has been obtained as required by law.

6. **Nuisance.** No noxious or offensive activity shall be carried on, or upon any of the lots subject to these covenants, nor shall any activity or use be conducted thereon which may become an annoyance or nuisance to other lot owners within this subdivision or to use or enjoyment of said lots. For these purposes and without limiting the scope of these provisions, Declarant intends to cover under noxious or offensive activity, the use of the lots or improvements thereon for the cultivation, processing, manufacture, storage, sale or use of illegal drugs, substances or objects of any kind or for the purpose of furthering illegal activity thereon is prohibited.

7. **Maintenance and Appearance.** No lumber, scrap metal, bulk materials, disabled motor vehicles, equipment, refuse or trash shall be kept stored or allowed to accumulate on a lot which is visible from another lot or the roadway; provided, however, that lumber and building materials may be maintained on a lot during the course of construction of a permitted structure, but any excess materials following such construction shall be removed or stored.

8. **Permitted Structures.** All structures to be constructed on lots shall conform to the requirements set forth below and no construction shall begin until design review has been completed as provided below.

9. **Height limitations of structures.** [RESERVED]

10. **Minimum area of farm dwellings.** Each farm dwelling unit shall have a minimum living area of not less than 1,500 square feet of living area, not including garages, carports, lanais, porches, verandas or other similar areas.

11. **Preservation of View.** [RESERVED]

12. **Cisterns, catchment tanks, ponds and water wells.** Any cistern or catchment tank shall be designed to minimize visual impacts from the roadway or from other lots in the subdivision. Use of underground or bermed construction, placement of cisterns or catchment tanks behind screen plantings, farm dwelling or other structures or fences are all means by which such minimization can be achieved. Pool type tanks are not allowed. Ponds for decoration or agricultural purposes are permitted. Such ponds must be maintained to preclude the breeding of mosquitoes or other insects.

13. **Drainage and Erosion Control.** Owners of lots within the Subdivision shall be responsible for any interference with the existing drainage patterns, grading and erosion control measures that may adversely affect other lots in the subdivision, common areas or lands outside the subdivision.

14. **Garages, Clotheslines, Storage, Antennae.** Garages and other outdoor storage structures shall be designed and located so as to minimize visual impacts on other lots and from the roadway easement. Clotheslines, outdoor storage structures, antennae or satellite dishes shall not be visible from view from other lots or from roadway easements. Fences or appropriate screen plantings may be used to screen such items from view.

15. **Lighting.** Outdoor lighting to illuminate walkways, driveways, stairs and entry areas is permitted. Lighting fixtures shall be designed and located so as not to radiate light into the sky or to shine directly into a residence on another lot. Screen plantings or structures to minimize such undesirable illumination may be used to minimize impacts on a residence on another lot. Appropriate security lighting which uses infrared or other detection systems to turn on lighting to detect intruders may be used, but in such cases the security lighting shall be limited to use for such purposes and not for general illumination, nor shall such systems be designed so as to remain on continuously.

16. **Utilities.** All methods and materials used for electrical, telephone and cable lines shall comply to applicable laws, including County building and electrical codes. Any cost of installation of such underground systems from the terminal box to each structure shall be the sole responsibility of the affected owner.

17. **Construction Materials.** No second hand lumber, roofing or materials of any kind shall be permitted for construction of any improvements on the property. Provided, however, that recycled bricks, quarry stone, or other suitable masonry materials used for appropriate decorative purposes may be used. Use of highly reflective surfaces for exterior surfaces of structures, such as uncoated galvanized iron roofs, mirrored glass and the like is not compatible and the use of same is prohibited. Where improvements require use of materials such as metal chain link fences or metal water storage tanks, such materials shall be screened from sight by use of earth berms, landscaping plantings and the like, and to the extent practicable, the visual effects shall be minimized by painting or coating metal surfaces with nonreflective coatings of appropriate colors.

18. **Temporary structures and trailers.** Except as provided herein, no trailers or other temporary structures shall be permitted on any lot. Temporary sheds for secure storage of construction materials or tools may be maintained on a lot, but must be removed on completion of the improvements and in any event may not be maintained on a lot for a period of longer than nine months. Containers for the shipment of horticultural or agricultural products or the receipt of agricultural supplies may be kept on a lot, but for only the period necessary to load or unload said containers. In no event shall any temporary structure or trailer be used for residential purposes at any time.

19. **Roadways.**

a. Access to the lots subject to these covenants is through private roadways known as Kapoho Kai and Kikiao Street. Kapoho Kai and Kikiao Street are being maintained by Vacationland Hawaii Community Association and all lots subject to these

covenants are responsible to pay road assessments of that association for their share of maintenance costs. If in the future, there are road repair, maintenance or replacement work that is necessary, but which is not done by said association, the owners of lots subject to these covenants shall share equally in such costs to improve, repair and replace the roadway and any related improvements within the roadway lot. The roadway will not be designed or constructed to dedicable standards of the County of Hawaii. The County of Hawaii will not own or maintain said roadway and the County of Hawaii has no obligation to repair, maintain, inspect or replace any of said roadways or any other non-dedicable improvements.

b. Vehicles and equipment shall not be parked within the roadway areas except for the purpose of construction or maintenance of roadways or utilities within the roadway easement or for loading or unloading. In the case of unloading and unloading activities, such vehicles and equipment shall not be left unattended.

c. All driveway, ingress or egress points shall include material from the edge of roadway of sufficient length to prevent damage to the edge of the roadway. Connections to the roadway shall be aligned so as to allow safe ingress and egress and include sufficient turning width and radius so that vehicle using such connections will travel over the connections.

20. **Individual wastewater systems.** Prior to occupancy of any farm dwelling on a lot, the owner of that lot shall install an individual wastewater system (such as one with a septic tank with drainfield) under plans approved by a professional engineer and approved by the State Department of Health. Installation shall be by a licensed contractor with inspection prior to backfilling and certification of the condition of the system by a professional engineer.

The farm dwelling shall not be occupied nor shall the wastewater system be used until the State Department of Health has approved the use of the wastewater system. The owner of a lot shall comply with all applicable governmental regulations regarding maintenance of private wastewater systems. If a public sewer system is extended to lots within the subdivision, the lots that are accessible to the public sewer system shall be subject to the sewer connection requirements of Chapter 21 (Sewers), Hawaii County Code.

21. **Covenants Relating to Variance.** In compliance with Condition 6 of the County of Hawaii Variance Permit 1358 (VAR 02-028) requesting variance from various requirements of the County of Hawaii Subdivision Code, Declarant imposes the following covenants on each of the lots subject to these covenants:

a. The Declarant and/or owners shall indemnify and defend the State of Hawaii or County of Hawaii from any and all liability arising out of vehicular access to and from the subject property utilizing the private roadway easements within the existing TMK property designated on the subdivision application's (SUB 2000-0153) final plat map.

b. The subject property or any of the proposed lots created by the proposed subdivision may not be made subject to a condominium property regime.

c. The owners understand that the lots created by SUB 2000-0153 have been approved with this road variance, and that they will use and maintain the privately owned access roads to and within their property, on their own without any expectation of governmental assistance.

d. The owners, their assigns or successors, including any subsequent owners, agree that the lot is suitable for its intended purposes, and that there are no special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of that property, and there are, therefore, no grounds upon which to seek a further variance from the Subdivision Code to allow further subdivision of the property.

22. **Design Review.** [RESERVED]

23. **Design Review Guidelines.** [RESERVED]

24. **Modification or Amendment of Covenants.** For a period of 5 years from the recordation of these covenants, these covenants may only be amended by Declarant. Declarant may waive her rights to amend these covenants before the expiration of said 5 year period by recording a waiver in the Bureau of Conveyances, State of Hawaii. Upon expiration of Declarant's right to amend, the owners by not less than three quarters of the votes of the lots subject to these covenants, may amend or modify these covenants.

25. **Annexation.**

a. The Declarant may annex additional property to the subdivision with the consent of the owner of the additional property, which additional property shall then be subject to this Declaration of Restrictive Covenants. Declarant may make such annexation by notifying the Association and by recording a Supplemental Declaration of Restrictive Covenants (supplemental declaration). Declarant's right to make such annexation shall expire 8 years after this Declaration of Restrictive Covenants is recorded. Declarant is not obligated to make any annexation.

b. The owners may annex additional property, which additional property shall then be subject to the Declaration of Restrictive Covenants. Annexation by the Association shall require approval of not less than fifty-one percent (51%) of the owners, the approval of Declarant as long as Declarant owns a lot in the subdivision, and the consent of the owner of the additional property and shall be made by recording a supplemental declaration signed by an authorized representative of the consenting owners and the owner of the additional property.

26. **Covenants Run with Land.** These restrictive covenants shall operate as covenants running with the land. Each and any of said restrictive covenants shall be binding upon and enforceable and effective against Declarant, her successors or assigns, or any owner of lots subject to these covenants, their heirs, successors or assigns. All deeds, mortgages, agreements of sale, leases, or conveyances made shall be subject to these restrictive covenants, whether expressly made in such conveyance, mortgage, or lease.

27. The violation of these restrictive covenants creates irreparable injury to the Declarant and owners of lots subject to these restrictive covenants such that the remedies at law are inadequate. Accordingly, Declarant or any owner of lots subject to these covenants and the Association shall be entitled to obtain injunctive relief, including mandatory injunctive relief, from an appropriate court for any violations of the restrictive covenants, without prejudice to the right of said Declarant or owners to obtain any other remedy concurrently or thereafter for said breach, including an action for damages. The failure of Declarant or any owner to enforce any of the restrictive covenants shall not be deemed a waiver of the rights of said persons to thereafter enforce such covenants. If suit is initiated for breach of these restrictive covenants, and injunctive relief or damages is awarded, the party obtaining such relief shall be entitled to reasonable attorneys fees and costs against the owner in violation.

28. These restrictive covenants shall apply from the date hereof for a period of thirty (30) years. Thereafter, these restrictive covenants shall continue in effect during successive 30 year periods, except to the extent that the same is terminated prior to commencement of any such period by the agreement in writing by not less than seventy-five percent (75%) of the vote of the owners of lots subject to these restrictive covenants; said agreement to be effective on recordation in the Bureau of Conveyances of the State of Hawaii.

29. **Severability.** If any provision in these restrictive covenants shall be found invalid or otherwise ineffective by a court of competent jurisdiction or otherwise, all other provisions of these restrictive covenants shall, to the extent possible, be construed as to remain in full force and effect.

Dated: Hilo, Hawaii, March 19, 2004.



BENJAMAS SEUNGSIRI, Trustee of the
Benjamas Seungsiri Revocable Living Trust
dated August 21, 2002

STATE OF HAWAII)
): ss.
COUNTY OF HAWAII)

On this 19th day of March, 2004,
before me personally appeared BENJAMAS SEUNGSIRI, Trustee of the Benjamas Seungsiri
Revocable Living Trust dated August 21, 2002, to me known to be the person described in and who
executed the foregoing instrument as such Trustee and acknowledged to me that she executed the
same as her free act and deed as such Trustee.

Janice Y. Kaneshiro

JANICE Y. KANESHIRO

Notary Public
State of Hawaii

My commission expires: 7/4/2007

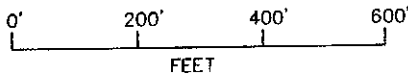
vs

KAPOHO BEACH RD.

MAP SHOWING PROPOSED SUBDIVISION
 OF A PORTION OF LAND PATENT 8177,
 L.C.A.W. 8559, APANA 5 TO C. KANAINA
 LAEPOO-PUUA, PUNA, HAWAII, HAWAII
 T.M.K. (3) 1-4-2: 50

OWNER: BENJAMAS SEUNGSIRI
 P.O. BOX 2285
 PAHOA, HI 96778
 ZONE: A-1A

TRUE NORTH
 SCALE: 1 IN. = 200 FT.



VACATIONLAND HAWAII
 SUBDIVISION, UNIT II
 ZONE: A-1A

KAPOHO LAND & DEVELOPMENT CO. LTD.
 ZONE: RS-10

LOT 1
 12.780 ACRES

LOT 2 3.000 ACRES

LOT 3 3.000 ACRES

LOT 4 3.000 ACRES

LOT 5 3.000 ACRES

LOT 6 3.000 ACRES

LOT 7
 2.000 ACRES

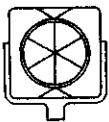
VACATIONLAND
 HAWAII
 SUBDIVISION
 ZONE: RS-10



This work was prepared by me
 or under my direct supervision

Niels Christensen

Niels Christensen
 Licensed Professional Land Surveyor
 License Number 9077



The Independent
 Hawaii
 Surveyors
 1044 Ohi Ohi Way
 Hilo, HI 96720
 Phone/FAX
 808 959-0380
 Email
 niels@oaha.net

KAPOHO KAI RD.

1,941.87' S
 5,869.89' E
 Ref. Δ "KAPOHO"
 THIRD REVISION
 DATE: June 3, 2003
 Drawing: JOB2945c.DWG