

TRANSMITTAL MEMORANDUM

TO: Christie Pentak
West Molokai Association
FROM: Harold Edwards
DATE: December 30, 2004
RE: Papohaku Declaration of Covenants, Conditions &
Restrictions/Supplements

URGENT FOR REVIEW & COMMENT AS REQUESTED FOR YOUR INFORMATION

Aloha Christie,

Enclosed are the following for your use:

- 1) Papohaku Declaration of Covenants, Conditions & Restrictions
- 2) Supplemental No. 1 Declaration of Covenants & Restrictions
- 3) Supplemental No. 2 Declaration of Covenants & Restrictions
- 4) Supplemental No. 3 Declaration of Covenants & Restrictions
- 5) Supplemental No. 4 Declaration of Covenants & Restrictions
- 6) Supplemental No. 5 Declaration of Covenants & Restrictions
- 7) Supplemental No. 6 Declaration of Covenants & Restrictions
- 8) Supplemental No. 7 Declaration of Covenants & Restrictions

Sincerely,
Harold Edwards
Senior Vice President

cc: Barbara Rasmussen

CONFIDENTIALITY NOTICE

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OFFICE OF THE
ASSISTANT REGISTRAR, LAND COURT
STATE OF HAWAII
Bureau of Conveyances

The original of this document was
recorded as follows:

DOCUMENT NO. 3293468
DATE 07/07/2005 TIME 11:00
TCT _____

LAND COURT SYSTEM

REGULAR SYSTEM

Return by: Mail [] Pickup [X] To:

NEELEY & ANDERSON LLP
A Limited Liability Law Partnership
Joyce Y. Neeley (3134-0)
733 Bishop Street, Suite 2301
Honolulu, Hawaii 96813 (808) 536-8177

This document contains _____ pages

**AMENDMENT OF WEST MOLOKAI ASSOCIATION
DECLARATION OF COVENANTS AND RESTRICTIONS**

(Map Nos. 7, 8, 9, 11, 15, 16, 18, 19)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, by that certain Declaration of Covenants and Restrictions filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 784612 and noted on TCT Nos. attached hereto as Exhibit A, Kaluakoi Corporation, a Hawaii corporation, and Kepuhi Partnership, a Hawaii Partnership, established the West Molokai Association ("Association") and subjected the lands described in said Declaration to the easements, restrictions, covenants and conditions set forth in said Declaration; and

WHEREAS, Article VIII, Section 8.01 of said Declaration provides that the Declaration may be amended by the vote or written consent of not less than 75% of the total votes of each class of Association owners; and

WHEREAS, there is only one class of Association owners; and

WHEREAS, at a duly held meeting, members holding not less than three quarters of the total votes of the Association voted to amend the Declaration, as hereinafter set forth;

NOW, THEREFORE, the Declaration shall be and hereby is amended as follows:

1. Article III, Section 3.01(a)(2) of the Declaration is amended to read as follows:

(2). No more than one family shall occupy any Single Family Residential Lot, any apartment unit on a Multiple Family Residential Lot, or any Condominium Unit, except that in the case of a Single Family Residential Lot a second family may occupy a guest house on a temporary basis or may occupy a servants' quarters. As used herein, "family" shall have the same meaning as defined in the Maui County Zoning Code. Notwithstanding the foregoing however, the Board of Directors shall be authorized to make exceptions to the above referenced restrictions in order to comply with the Federal and State Fair Housing Acts.

2. Article III, Section 3.01(a)(7) is amended to read as follows:

(7). Excepting Agricultural Lots, no animals or fowl shall be maintained on any lot, other than a reasonable number of generally recognized house pets kept for the Owner's personal pleasure and not for sale or other commercial purposes. No animals or fowl shall be permitted which are a nuisance to neighbors. Visually impaired persons may keep guide dogs as defined in Chapter 515, Hawai'i Revised Statutes, hearing impaired persons may keep signal dogs as defined in Chapter 515, Hawai'i Revised Statutes, and physically impaired persons may keep service dogs as defined in Chapter 515, Hawai'i Revised Statutes.

3. Article V, Section 5.02(a) is amended to read as follows:

(a). Each person, corporation or other legal entity who is, or such persons, corporations or other legal entities who are the beneficial owner (herein called "Owner") of any lot (within West Molokai) shall be a member of the Association, provided, however, that (i) with respect to any Condominium Unit, the term Owner shall mean an apartment owner as defined in the Condominium Property Act (Chapter 514A, Hawaii Revised Statutes, as the same may from time to time be amended), and (ii) with respect to Common Property, the Association shall not have the rights of membership such as voting. No person other than an Owner may be a member of the Association.

4. Article V, Section 5.07 is amended to read as follows:

Section 5.07. Liability of Members of the Board.

(a) No member of the Board shall be personally liable to any owner, guest, lessee or to any other person, including the Declarant, for any error or omission of the Association, its representatives and employees, the Committee or the manager, provided, however, that such member has with actual knowledge possessed by him, acted in good faith. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the Association) if that person is or was an officer, director, committee member, employee, or agent of the Association, against expenses, judgment, fines, settlements, and other amounts actually and reasonably incurred in connection with the proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal proceeding, had no reasonable cause to believe the conduct of the person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Association, or that the person had reasonable cause to believe that the person's conduct was unlawful.

(b) The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the Association to procure a judgment in its favor because that person is or was an officer, director, employee or agent of the Association, against expenses actually and reasonably incurred by the person in connection with the defense or settlement of the action if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Association; except that no indemnification shall be made in respect of any claim, issue, or matter as to which the person shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of the person's duty to the Association, unless and only to the extent that the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

(c) To the extent that an officer, director, committee member, employee or agent has been successful on the merits or otherwise in defense of any proceeding referred to in subsection (a) or (b), or in defending any claim, issue, or matter therein, such person shall be indemnified by the Association against expenses actually and reasonably incurred by such person in connection therewith.

(d) Any indemnification under subsection (a) or (b) shall be made by the Association only as authorized in the specific case upon a determination that indemnification is proper in the circumstances because the person has met the applicable standard of conduct set forth in subsection (a) or (b). The determination shall be made by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to the proceeding, or, if a quorum is not obtainable, by either: (i) independent legal counsel in a written opinion, or (ii) by the members, or (iii) by the court in which the proceeding is or was pending upon application made by the Association or the indemnitee or the attorney or other person rendering services in connection with the defense, whether or not the application by the indemnitee, attorney, or other person is opposed by the Association.

(e) Expenses incurred in defending any proceeding may be paid by the Association in advance of the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the indemnitee to repay such amount unless it shall ultimately be determined that the indemnitee is entitled to be indemnified by the Association as authorized in this section.

(f) The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any By-Law, agreement, vote of owners, or disinterested directors or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be an officer, director, committee members, employee, or agent and shall inure to the benefit of the heirs and personal representatives of such a person.

(g) The Association shall have the power to purchase and maintain insurance on behalf of any officer, director, committee members, employee, or agent of the Association, against any liability asserted against or incurred by the officer, director, employee, or agent in any such capacity or arising out of the person's status as such, whether or not the Association would have the power to indemnify the officer, director, committee members, employee, or agent against such liability under this section. Any such insurance may be procured from any insurance company designated by the Board of Directors, including any insurance company in which the Association shall have an equity or other interest, through stock ownership or otherwise.

(h) This section does not apply to any proceedings against any trustee, investment manager, or other fiduciary of an employee benefit plan in that person's capacity, though the person may also be an officer, director, employee, or agent of the employer Association. Nothing contained in this section shall limit any right to indemnification to which a trustee, investment manager, or other fiduciary may be entitled by contract or otherwise.

5. Article VI, Section 6.02 (d) is amended to read as follows:

(d). If at any time and from time to time during any fiscal year, the maintenance assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy which shall be assessed to the Owners in the manner set forth in paragraph (c) above. The Board shall notify the Owners of any increase in regular assessments at least thirty (30) days prior to the increase.

6. Article VI, Section 6.06 is amended to read as follows:

Section 6.06. Lien and Default. Each assessment under this Article VI shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed, and each Owner by acceptance of an agreement of sale, deed or lease, whether or not it shall be so expressed in any such agreement of sale, deed or lease, shall be deemed to covenant and agree to pay the same to the Association, provided that no mortgagee, or any officer, director or trustee thereof, shall be personally obligated to pay any assessment although the assessment will be a charge against the lot subject to the assessment as provided hereafter. If the Owner does not pay such assessment or any installment thereof when due, the Owner shall be deemed in default and the amount of the assessment not paid, together with the amount of any subsequent default, plus the late charge and interest at ten percent (10%) per annum and costs, including reasonable attorneys' fees, shall automatically be and become a lien upon the property of such Owner regardless of whether a Notice of Lien is filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii. In case of a voluntary conveyance the grantee, vendee or lessee of any lot shall be jointly and severally liable with the grantor, vendor or lessor for all unpaid assessments together with interest, costs of collection and reasonable attorneys' fees which shall be a charge on the lot at the time of the conveyance, without prejudice to the right of the person receiving the conveyance to recover from the person making the conveyance the amounts so expended by the person receiving the conveyance. Any party to a conveyance shall be entitled to a statement from the Association setting forth the amount of any unpaid assessment together with any interest, cost of collection and reasonable attorneys' fees which may be a charge on a lot; and neither the person making or receiving the conveyance shall be liable for, nor shall the lot conveyed be subject to, a lien for any amounts in excess of the amounts set forth in such statement. If more than one person owns a lot, all such co-owners shall be jointly and severally liable for all amounts which are a charge against or lien upon such lot. Such lien shall be subject to and subordinate to the lien of any first mortgage on the lot of such Owner recorded prior to the Notice of Lien of the Association, and to the lien of any water or sewer assessments. A foreclosure of any such paramount lien, whether by judicial proceedings or pursuant to a power of sale

contained in such mortgage, shall extinguish the lien as to payments of assessments which become due prior to such sale, transfer or conveyance but no such sale, transfer or conveyance shall relieve such lot, or the purchaser or transferee thereof with regard to assessments thereafter becoming due except as to any mortgagee as provided above. Association liens may be foreclosed through suit in like manner as a mortgage of real property, and the Association shall have power to bid on the lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the same. A suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any remedies provided by law for the enforcement of such assessment obligation.

7. Article VI, Section 6.09(a) are amended to read as follows:

Section 6.09. Mortgagee Protection. Notwithstanding all other provisions of Article VI hereof:

(a) The lien which may be created hereunder upon any Lot shall be subject and subordinate to the indebtedness secured by any first mortgage (meaning a mortgage with first priority over other mortgages) recorded with the Office of the Assistant Registrar of the Land Court of the State of Hawaii prior to the Notice of Lien of the Association upon such interest made in good faith and for value and to any recorded purchase money mortgage recorded as aforesaid prior to the Notice of Lien of the Association; provided, however, that after the foreclosure of any such mortgage a lien may be created pursuant to Section 6.06 of this Article on the interest of the purchaser at such foreclosure sale to secure all assessments, assessed hereunder to such purchaser as an Owner, after the date of such foreclosure sale.

8. Article VIII, Section 8.01(a)(1) is amended to read as follows:

(1). The vote of Owners having not less than three-fourths (3/4) of the total votes of each class of Owners of lots within West Molokai, approving the proposed amendment or amendments or the repeal of West Molokai Protective Covenants either by written consent or at a meeting of the Association duly held, the notice of which shall have stated as a purpose the consideration of the amendment or repeal of the West Molokai Protective Covenants, giving the substance or any proposed amendments or indicating the provisions to be repealed, as the case may be; PROVIDED HOWEVER, that amendments proposed to be adopted by way of written consent by one or more Owners other than the Board of Directors, must be submitted to the Board of Directors accompanied by a petition signed by no less than

25% of the Owners. The proposed amendment, rationale, and ballots for voting shall then be mailed by the Board of Directors to the Owners at the Association's expense without change within 30 days of the receipt of the petition by the Board of Directors. In the event that the amendment is duly adopted by sufficient votes, then the amendment shall be recorded with the Assistant Registrar of the Land Court of the State of Hawaii as specified in Section 8.0(3) hereof;

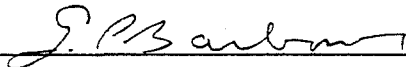
9. Article VIII, Section 8.01(a)(2) is repealed in its entirety.

In all other respects the Declaration, as herein amended, is ratified and affirmed and shall be binding upon the parties hereto, their successors and assigns.

The undersigned officers of West Molokai Association hereby certify that the foregoing amendments were adopted as aforesaid.

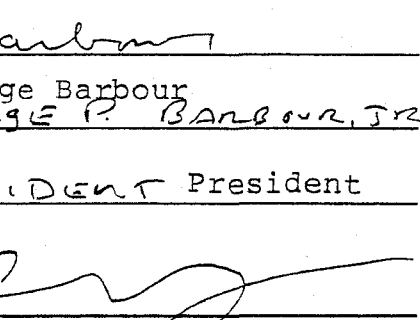
IN WITNESS WHEREOF, the undersigned have executed these presents this 13th day of APRIL, 2005.

WEST MOLOKAI ASSOCIATION

By: 

Print Name: George Barbour
GEORGE P. BARBOUR, JR

Print Title: PRESIDENT President

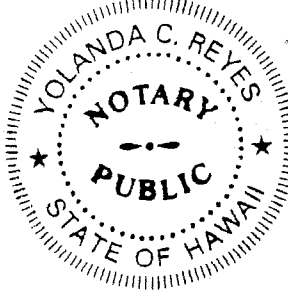
By: 

Print Name: Harold Edwards
HAROLD EDWARDS

Print Title: TREASURER Treasurer

STATE OF Hawaii)
) SS:
COUNTY OF Maui)

On this 13th day of April, 2005, before me personally appeared Harold Edwards, to me personally known, who being by me duly sworn, did say that he is the Treasurer of West Molokai Association and that said instrument was signed in behalf of said Association by authority of its Board of Directors, and that said officer acknowledged said instrument to be the free act and deed of said Association.

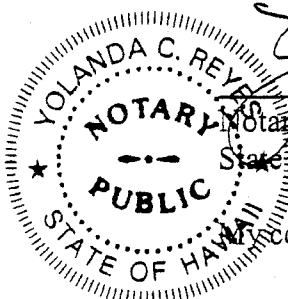


Yolanda C. Reyes
Notary Public, Hawaii
State of _____

My commission expires: 06-01-05

STATE OF Hawaii)
) SS:
COUNTY OF Maui)

On this 13th day of April, 2005, before me personally appeared George Barbour, to me personally known, who being by me duly sworn, did say that he is the President of West Molokai Association and that said instrument was signed in behalf of said Association by authority of its Board of Directors, and that said officer acknowledged said instrument to be the free act and deed of said Association.



Yolanda C. Reyes
Notary Public, Hawaii
State of _____

My commission expires: 06-01-05

TRANSFER CERTIFICATE OF TITLE NOS.

WEST MOLOKAI ASSOCIATION

<u>LOT #</u>	<u>TCT #</u>	<u>LOT. #</u>	<u>TCT #</u>	<u>LOT #</u>	<u>TCT #</u>
<u>Map 7</u>					
13	181,965				
<u>Map 8</u>					
24	624,770	25	386,391	26	418,342
27	223,392	28	386,901	29	379,511
30	598,702	31	550,244	32	277,268
33	277,269	34	588,076	35	277,270
36	349,908	37	277,272	38	277,692
39	546,242	40	407,536	42	208,741
43	357,419	44	236,863	45	598,702
46	526,272	47	474,927	48	525,550
49	600,121	50	390,219	51	700,825
52	358,968	53	277,284		
<u>Map 9</u>					
63	208,153	66	208,156	68	208,158
<u>Map 11</u>					
70-85	220,492				
<u>Map 15</u>					
94	230,003				
<u>Map 16</u>					
97	230,005	98	230,006		

TRANSFER CERTIFICATE OF TITLE NOS.

WEST MOLOKAI ASSOCIATION

LOT #	TCT #	LOT. #	TCT #	LOT #	TCT #
Map 19					
128	598,702	240	730,634		
129	598,702	241	730,635		
131	690,843	242	716,161		
138	744,512	244	738,390		
147	702,125	245	707,974		
148	704,050	248	693,465		
149	687,675	250	698,198		
151	598,702	251	725,680		
152	687,677	252	699,219		
156	729,244	253	598,702		
158	683,496	254	598,702		
204	689,752	255	698,379		
217	698,738	256	598,702		
218	598,702	257	598,702		
219	598,702	258	598,702		
220	702,920	259	598,702		
221	710,229	260	742,453		
222	697,879	261	702,846		
223	704,049	262	598,702		
225	700,822	263	598,702		
226	690,458	264	598,702		
227	696,273	265	598,702		
228	694,108	266	696,115		
229	693,464	267	716,159		
230	692,083	268	716,158		
231	692,084	271	739,158		
232	693,237	272	728,577		
234	700,268	341	684,106		
235	700,823	343	729,382		
236	700,576	357	693,983		
237	699,043				
238	739,072				
239	696,789				