

R-440

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

DEC 30, 1993 08:01 AM

Doc No(s) 93-218267

/s/ S. FURUKAWA  
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$0.00

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION RETURN BY MAIL ( ) PICK-UP (X)

SECURITY TITLE CORPORATION

**STC**

93-1418

SECURITY TITLE CORPORATION HAS RECORDED THIS INSTRUMENT AS AN  
ACCOMMODATION FOR CREDITORS' INFORMATION HAS BEEN MADE AS TO  
ITS EXECUTION AND EFFECT ON TITLE.

FIRST AMENDMENT OF DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR ALIOMANU ESTATES

WHEREAS, by Declaration of Covenants, Conditions and Restrictions for Aliomanu Estates dated January 13, 1992 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 92-040191 (the "Declaration"), RONALD C. YANKE, husband of Linda L. Yanke, as owner and developer (hereinafter referred to as "Declarant"), did declare that the property described in the Declaration and known as "Aliomanu Estates" was to be held, leased, encumbered, conveyed, sold, used, occupied and improved subject to the covenants and conditions stated in the Declaration; and

WHEREAS, the Aliomanu Estates Community Association, a Hawaii non-profit corporation comprised of all lot Owners in the Aliomanu Estates project, was incorporated on June 4, 1993; and

WHEREAS, pursuant to Article IX, Section 2 of the Declaration, the Association is authorized to amend the Declaration by the affirmative vote of not less than 75% of the lot Owners, provided that in order for the amendment(s) to be effective the Declarant must give his written consent to any such amendment(s) until such time as (a) all subdivision improvements covered by the Declarant's subdivision bond for Aliomanu Estates are completed and accepted by the appropriate government agencies, and (b) the Declarant has sold not less than 75% of the lots comprising Aliomanu Estates; and

WHEREAS, the two aforesaid conditions for dispensing with the Declarant's written consent to amendment(s) of the Declaration by the Association have not yet occurred; and

WHEREAS, at a meeting of the Association duly called and held in Lihue, Kauai, Hawaii on November 13, 1993, for the purpose, among other things, of amending the Declaration, Owners representing 91.67% of the total voting power of the Association agreed to amend the Declaration as is stated hereinbelow; and

WHEREAS, the Declarant approves of the amendments contained hereinbelow and is willing to give his written consent thereto, as required under the Declaration; and

WHEREAS, the Declaration further provides, in Article IX, Section 3, that no amendment(s) approved pursuant to Article IX, Section 2 of the Declaration shall be effective unless and until a written certificate of such amendment(s) is recorded with

the Bureau of Conveyances of the State of Hawaii, as detailed in said Article IX, Section 3.

NOW, THEREFORE, the Association, by and through its duly authorized officers, hereby certify that the Declaration is amended as follows:

AMENDMENT NO. 1. Article IV, Section 3 of the Declaration is amended to read as follows:

Section 3. Building Setbacks. In addition to any applicable County building setback requirements, there shall be 100 foot building setbacks for all residences, other buildings and structures (other than fencing, walls and landscaping) along the entire lengths of Papaa Road and Aliomanu Road (except for the portion of Lot 9C-1 which abuts Aliomanu Road and except for the Lot 5 boundary along Aliomanu Road and the Lot 11 boundary along Papaa Road), on both sides of the entire length of Roadway Lot 13 (Aliomanu Estates Drive), and along the entire length of the mauka (i.e., southwest) boundaries of Lots 2, 3 and 4. Every residential structure (except for any residences constructed on Lot 9C-1 or any lot created from a subdivision of Lot 9C-1, and except for the ocean ends of Lots 6-12, inclusive, all of which shall be governed by applicable County setback requirements) shall also have a minimum distance of 50 feet from all other Lot boundaries which are not described in the preceding sentence.

AMENDMENT NO. 2. Article VII, Section 7 of the Declaration is amended to read as follows:

Section 13. Landscape Maintenance and Repair. Except for any landscape, landscape maintenance, sprinkler and fencing easement area reserved to the Declarant or the Association pursuant to Article VIII below, each Owner shall, at his sole cost and expense, landscape his Lot and mow the areas of the Lot which have not been landscaped at least once each three months in order to control the growth of the natural vegetation. All landscaping and other crops or vegetation planted by any Owner on his Lot shall be subject to Design Committee review and approval. In the event any Owner fails to maintain his landscaping or to mow the areas of his Lot which have not been landscaped, the Board and its authorized agents shall have the right to enter such Lot and perform such

mowing and landscape work upon the Lot, and the Owner shall reimburse the Association for the cost thereof promptly upon demand together with interest thereon at the rate of twelve percent (12%) per annum. In the event of the Owner's default in the payment of same, the amount thereof shall be and become a lien upon the Lot in the manner described in Article VI.

AMENDMENT NO 3. Article VIII, Paragraphs 4,6 and 8-14, inclusive, of the Declaration are amended to read as follows:

4. Lot 1 is subject to Easement 10 containing 8,457 square feet for well, tank and pump purposes, as shown on File Plan 2023. Lot 1 is also subject to an easement in favor of the Association and/or the Declarant for landscaping, landscape maintenance, sprinkler and fencing purposes within an area which is not more than 50 feet (measured perpendicularly) into Lot 1 from its boundary with Papaa Road.

6. Lot 4 is subject to Easement 7 containing 1,892 square feet for drainage purposes and Easement 9 containing 12,596 square feet in favor of Lot 9C-1 and road remnant R-1, for pedestrian access purposes, both as shown on File Plan 2023. Lot 4 is also subject to an easement in favor of the Association and/or the Declarant for landscaping, landscape maintenance, sprinkler and fencing purposes within the portion of Lot 4 comprising the entire slope area along Aliomanu Road.

8. Lot 9 is subject to Easement 2 containing 50,450 square feet for public vehicular access purposes, Easement 3 containing 5,383 square feet, in favor of Lot 12, for access purposes, Easement 4 containing 10,854 square feet for public parking purposes, Easement 6 containing 2,400 square feet for drainage purposes, and Easement 8 containing 6,438 square feet for public pedestrian access purposes, all as shown on File Plan 2023. Lot 9 is also subject to easements in favor of the Association and/or the Declarant for landscaping, landscape maintenance, sprinkler and fencing purposes within an area which is not more than 30 feet (measured perpendicularly) into Lot 9 along the boundaries of the aforesaid Easements 2 and 4.

9. Lot 10 is subject to an easement in favor of the Association and/or the Declarant for landscaping, landscape maintenance, sprinkler and fencing purposes within an area which is not more than 30 feet (measured

perpendicularly) into Lot 10 along that portion of its boundary with Lot 9 which is also the boundary of Easement 2 as shown on File Plan 2023. Lot 10 is also subject to Pedestrian Easement P-1 in favor of the Association and containing a total of 3,961 square feet for pedestrian purposes, which easement is more fully described in Grant of Easement dated August 16, 1993 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 93-137301.

10. Lot 11 is subject to Easement 1 containing 1,700 square feet for public parking purposes and Easement 11 containing 14,825 square feet for grading purposes, both as shown on File Plan 2023.

11. Lot 12 is subject to Easement 8 containing 6,438 square feet for public pedestrian access purposes, as shown on File Plan 2023. Lot 12 is also subject to Pedestrian Easement P-1 in favor of the Association and containing a total of 3,961 square feet for pedestrian purposes, which easement is more fully described in Grant of Easement dated August 16, 1993 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 93-137301.

12. Lot 13 (Aliomanu Estates Drive) is reserved for roadway and utility purposes only.

13. Lots 1-12 are each subject to an easement in favor of the Association and/or Declarant for landscaping, landscape maintenance, sprinkler and fencing purposes within an area which is not more than 25 feet (measured perpendicularly) into each of said Lots from the Lot's boundaries with Kuhio Highway, Aliomanu Road, Papaa Road and/or Aliomanu Estates Drive (as the case may be with reference to each Lot). Within said landscape easement areas, the Owners shall not be permitted to place, construct or install any improvement or structure whatsoever (except driveways or other roads or vehicular access ways pursuant to the terms and conditions of Article IV) without the written approval of the Design Committee pursuant to the procedures detailed in Article IV. The designation of easements in this Paragraph 13 shall not be deemed to limit or amend any additional or broader easement areas for similar purposes which affect any Lot under any other provision of this Declaration.

14. Lots 1-12 are each subject to future easements related to the non-potable irrigation water system as stated in Article V, Section 3.

15. Lots 1-12 are each subject to the Declarant's rights as stated in Article X, Section 1.

AND, the Declarant, pursuant to Article IX, Section 2 of the Declaration, hereby gives his written consent to the foregoing amendments.

In all other respects the Declaration is hereby ratified and confirmed.

IN WITNESS WHEREOF, the Association and the Declarant have hereunto set their hands this 17<sup>th</sup> day of December, 1993.

ALIOMANU ESTATES COMMUNITY  
ASSOCIATION

By Ronald C. Yanke  
RONALD C. YANKE  
Its President

By Frank Supon  
FRANK SUPON  
Its Secretary/Treasurer

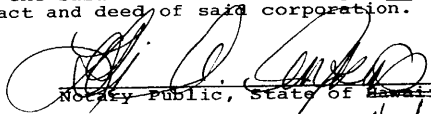
ASSOCIATION

Ronald C. Yanke  
RONALD C. YANKE

DECLARANT

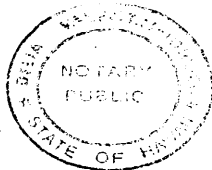
STATE OF ~~HAWAII~~ IDAHO )  
 ) ss.  
COUNTY OF ~~KAUAI~~ ADA )

On this 17th day of December, 1993, before me appeared Ronald C. Ganke, to me personally known, who being by me duly sworn, did say that he is the President of ALIOMANU ESTATES COMMUNITY ASSOCIATION, a Hawaii non-profit corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged he executed the same as the free act and deed of said corporation.

  
Notary Public, State of Hawaii IDAHO  
My commission expires: 7/12/95

STATE OF HAWAII )  
 ) ss.  
COUNTY OF KAUAI )

On this 20th day of December, 1993, before me appeared Frank Supon, to me personally known, who being by me duly sworn, did say that he is the Secretary/Treasurer of ALIOMANU ESTATES COMMUNITY ASSOCIATION, a Hawaii non-profit corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged he executed the same as the free act and deed of said corporation.

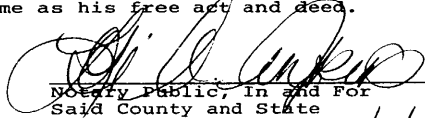


Delia Valentin - Merrick  
Notary Public, State of Hawaii  
My commission expires: 2-7-96

DELIA VALENTIN-MERRICK  
NOTARY PUBLIC-STATE OF HAWAII  
My commission expires: 2-7-96

STATE OF IDAHO )  
COUNTY OF ADA ) ss.

On this 17th day of December, 1993, before me appeared RONALD C. YANKE, who satisfactorily proved to be the person described in and who executed the foregoing instrument and acknowledged he executed the same as his free act and deed.

  
Notary Public, in and for  
Said County and State

My commission expires: 4/12/95