

RECORDATION REQUESTED BY:

82- 32508

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

AFTER RECORDATION, RETURN TO:

82 APR 16 PM 12: 27

COUNTY OF HAWAII  
PLANNING DEPARTMENT  
Hilo, Hawaii

LIBERATED 16281, 466  
C.F. NEUMANN III, REGISTRAR

RETURN BY: Mail (X) Pickup ( )

FARM DWELLING AGREEMENT

WHEREAS, John T. Fitzgerald, Russell Archibald, David Spaulding, & Patricia Mallon  
(hereinafter "Owner"), whose residence mailing address is  
P.O.Box 1494 Honaunau, Hawaii 96726

\_\_\_\_\_, desires to enter into an  
agreement with the Planning Department of the County of Hawaii  
(hereinafter "County"); and

WHEREAS, there exists a single family dwelling on land  
which is within the exclusive use, possession, and control  
of Owner and which is legally described as follows:

TMK: 8-4-05:44 Lot 110  
Containing a land area of 8.45 acres  
Honaunau (Mauka), South Kona, Hawaii

and zoned Agricultural (A-5a)  
by the County of Hawaii and classified within an agricultural  
district by the State Land Use Commission; and

WHEREAS, Owner seeks the County's approval for the  
construction of an additional single family dwelling (hereinafter  
"farm dwelling") on the property described above; and

WHEREAS, Owner intends to conduct substantial agricultural  
activity on the subject property in furtherance of the State

Land Use policies relating to agricultural land and has commenced initial agricultural activity which, if pursued, will develop into a viable and substantial undertaking.

NOW, THEREFORE, IT IS AGREED that the County's approval is given and accepted, subject to the following conditions:

1. The farm dwelling shall be used to provide shelter only to persons conducting agricultural activity on the subject land; and

2. The existing dwelling shall be used in connection with a farm or where agricultural activity provides income to the family, as defined in section 1-4, part I, State Land Use District Regulations, Land Use Commission, which occupies the dwelling; and

3. Owner grants to the County the right-of-entry, after reasonable notice, for inspection of the premises to assure compliance with provisions of this agreement; and

4. This agreement shall run with the land and bind Owner's heirs, successors, and assigns with regard to the future use of the dwellings above described; and

5. The County's approval of the construction of the farm dwelling by this agreement shall be effective only while the agricultural ~~use~~ use is in existence, unless otherwise extended pursuant to Owner's written request prior to the above termination date. After such timely request, the County shall extend its approval upon the terms of this agreement only if it determines that the agricultural activity that is being conducted is viable, substantial in income production, and conforms to the applicable provisions of the State Land Use District regulations and policies; and

GGP  
np

4-11-14

GGP  
np

6. Owner shall record this agreement with the State of Hawaii Bureau of Conveyances and shall furnish a recorded copy of it to the County's Planning Department within six (6) months from the date of approval of the building permit for the farm dwelling; and

7. Failure of Owner to abide by this agreement shall result in the immediate removal of the farm dwelling by Owner at Owner's expense upon demand by County. Upon Owner's failure to remove the farm dwelling within one month after demand is made by the County, the parties agree that this agreement will be a nullity and the County may treat the additional farm dwelling as a violation of Chapter 205, Hawaii Revised Statutes, as amended, and applicable ordinances then in existence. This enforcement provision shall be binding on Owner's heirs, devisees, successors, and assigns.

IT IS HEREBY FURTHER AGREED that if this agreement is with a lessee, the legal owner shall be a party to this agreement.

IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws, rules, and regulations change to authorize said dwelling, upon request of the undersigned, this agreement may be reconsidered for possible amendment and/or severance.

IN CONSIDERATION OF THE AFORESAID, the County hereby accepts this agreement as being in conformity with Section 2.14 of the State Land Use District Regulations and Chapter 205, Hawaii Revised Statutes, as amended, relative to permitted uses within the Agricultural District.

IN WITNESS WHEREOF, the undersigned parties have caused this instrument to be executed on the 31<sup>st</sup> day of March, 1984.

Meredith Lenell <sup>attorney in fact</sup> for John T. Fitzgerald Russell Archibald  
John T. Fitzgerald Russell Archibald  
David Spaulding Patricia Mallon  
David Spaulding Patricia Mallon  
"Owner"

COUNTY OF HAWAII, through its Planning Department,

By Gweny Juler  
Its Planning Director

APPROVED AS TO FORM AND LEGALITY:

STATE OF HAWAII )  
) ss.  
COUNTY OF HAWAII )

On this 6<sup>th</sup> day of April, 1982, before me personally appeared Meredith Lenell to me personally known, who, being by me duly sworn, did say that she is the Attorney-in-fact of John T. Fitzgerald, duly appointed under said Power of Attorney, dated the 18<sup>th</sup> day of January, 1982, which said Power of Attorney is now in full force and effect; and that the foregoing instrument was executed in the name and behalf of said John T. Fitzgerald by Meredith Lenell as his Attorney-in-fact; and she acknowledged the instrument to be the free act and deed of John T. Fitzgerald.

Edwin T. Neede  
NOTARY PUBLIC, Third Judicial Circuit,  
State of Hawaii.

My commission expires: DEC 25 1982

16281 470

STATE OF HAWAII )  
 ) SS:  
COUNTY OF HAWAII )

On this 31<sup>st</sup> day of March, 1982,  
before me personally appeared Russell Archibald  
David Spaulding, Patricia Mallow  
to me known to be the person(s) described in and who executed  
the foregoing instrument, and acknowledged that he/she/they  
executed the same, by signing, and delivering the same, as  
his/her/their free act and deed.

Edwin T Ueda  
Notary Public, State of Hawaii

My Commission Expires: \_\_\_\_\_

EDWIN T. UEDA  
Notary Public, Third Judicial Circuit  
State of Hawaii  
My Commission expires December 25, 1982

STATE OF HAWAII )  
 ) SS:  
COUNTY OF HAWAII )

On this 15<sup>th</sup> day of April, 1982,  
before me personally appeared SIDNEY FUCE, to me personally  
known, who, being by me duly sworn, did say that he is the  
DIRECTOR of the Planning Department of the County of Hawaii;  
and that the instrument was signed on behalf of the Planning  
Department of the County of Hawaii, a governmental agency,  
and said SIDNEY FUCE acknowledged said instrument to be the  
free act and deed of said Planning Department, County of  
Hawaii.

Guillermo G. Sumera  
Notary Public, State of Hawaii

My Commission Expires: 9/22/85