

IN THE GRAND COURT OF THE CAYMAN ISLANDS



CAUSE NO. 8 of 2005

**In the Matter of Section 96 of the Registered Land Law
And in the Matter of the Cayman Kai Scheme of Development**

PETITION



TO THE GRAND COURT

The humble petition of Cayman Kai Property Owners Association, care of Maples and Calder, Uglan House, PO Box 309GT, George Town, Grand Cayman, shows that:

- 1 The expressions "Cayman Kai" and "the Land" are used in this Petition to mean all that area of land comprised in the Rum Point Registration Section Block 33B, Block 33E, Block 33M and parcels 1-7 and 22 of Block 33C.
- 2 On a date unknown to the Petitioners but no later than 1965 the Land was acquired by Cayman Island Basic Industries Limited ("Basic Industries"), a company incorporated on 13 July 1963.
- 3 Basic Industries established and carried out a scheme of development by subdividing the Land into approximately 350 parcels; constructing roads and installing services; and marketing the parcels as residential building plots. Basic Industries named its scheme of development "Cayman Kai".

- 4 An essential part of Basic Industries' scheme of development was the imposition of restrictive covenants for its own benefit and for the benefit of all those who would buy and develop building plots and their successors in title. Every time Basic Industries sold a parcel of land it imposed a set of nine restrictive covenants in identical terms, a specimen copy of which is annexed to this Petition and is hereinafter referred to as "the Restrictive Covenants".
- 5 Basic Industries imposed the Restrictive Covenants upon the sale of each parcel of land. Prior to the enactment of the Registered Land Law in 1971, Basic Industries incorporated the Restrictive Covenants into each individual conveyance. In the case of sales taking place after 1971 the Restrictive Covenants are set out in a signed schedule annexed to the transfer of land and are "noted" in the encumbrances section of each land register in accordance with Section 93 of the Law.
- 6 The Restrictive Covenants are intended and known to impose a scheme of mutually enforceable restrictions in the interests of all the owners of parcels of land within Cayman Kai including both the original purchasers and their successors in title.
- 7 The purchasers of individual parcels of land in Cayman Kai, including all of the Petitioners, have purchased their land (either from Basic Industries or a successor in title) on the footing that the Restrictive Covenants were for the benefit of all the other parcels of land within Cayman Kai.
- 8 The Cayman Kai Property Owners' Association is an unincorporated association whose members are proprietors of land in Cayman Kai. Its general purpose is to protect the interests of its members as proprietors of Cayman Kai and, in particular, to ensure that the Restrictive Covenants are enforced.
- 9 By paragraph 2 of the Restrictive Covenants "No buildings shall be erected, placed or altered on the premises until the construction plans and specifications and a plan showing the location of structure have been approved by the architectural control committee as to quality of workmanship and materials, harmony of external design with existing structures and as to location with respect to topography and finish grade elevation. No

fence or wall shall be erected, placed or altered on the premises unless similarly approved. Approval shall be as provided in paragraph 8".

10 By paragraph 8 of the Restrictive Covenants the architectural control committee was originally composed of Don L. Dise, Jack Von Ehr and Mikol Dise and in the event of their death or resignation, the remaining members have authority to designate their successors. The said Don L. Dise and Jack Von Her are now both deceased.

11 The said Don L. Dise, Jack Von Ehr and Mikol Dise composed the architectural control committee in or about 1965 because they were then shareholders and/or directors of Basic Industries.

12 By reason of the facts that:

12.1.1 Basic Industries has now sold all of the Land and no longer has any commercial interest in the enforcement of the Restrictive Covenants;

12.1.2 by its own admission, Basic Industries, and/or Mikol Dise (being the only surviving member of the architectural control committee) have failed to enforce the Restrictive Covenants; and

12.1.3 the architectural control committee is not functioning effectively or at all,

the composition of the architectural control committee and the method of appointing persons ought to be modified by deleting the existing paragraph 8 of the Restrictive Covenants and substituting the following:

"8 (a) The architectural control committee shall comprise three persons elected by the Cayman Kai Property Owners Association who shall hold office for a term of three years;

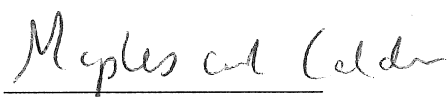
(b) The proprietors of every parcel of land in Cayman Kai shall be eligible for membership of the Cayman Kai Property Owners Association; and

(c) For the purposes of electing members of the architectural control committee, each member shall have one vote, the intent being that one vote shall attach to each parcel of land".

Your Petitioners therefore humbly pray for the following:-

- 1 A declaration that Cayman Kai (as defined) constitutes a scheme of development as a matter of law with the result that any proprietor of land, including the Petitioners, may enforce the Restrictive Covenants (as defined) against any other proprietor.
- 2 An order pursuant to Section 96 of the Registered Land Law that the Restrictive Covenants be modified by deleting paragraph 8 and substituting the following: "8 (a) The architectural control committee shall comprise three persons elected by the Cayman Kai Property Owners Association who shall hold office for a term of three years; (b) The proprietors of every parcel of land in Cayman Kai shall be eligible for membership of the Cayman Kai Property Owners Association; and (c) For the purposes of electing members of the architectural control committee, each member shall have one vote, the intent being that one vote shall attach to each parcel of land."
- 3 Such further or other relief as the Court thinks fit.

Dated this 10th day of January, 2005



Maples and Calder
Attorneys for the Petitioner

NOTE:

The Petitioners intend to apply for a direction that the Petition be advertised but not personally served on the proprietor of each parcel of land to which it relates.

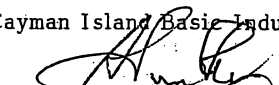
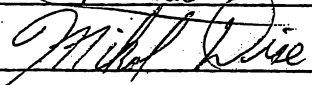
THIS PETITION was presented by Maples and Calder, Attorneys at Law for the Petitioner herein, whose address for service is PO Box 309GT, Umland House, George Town, Grand Cayman. (Ref: AJJ/601219-01)

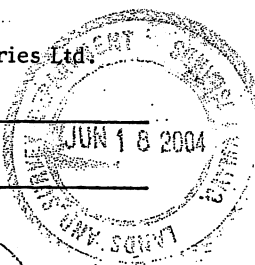
RESTRICTIVE COVENANTS

1. The premises shall not be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on the premises other than one detached single-family dwelling not exceed two and one-half stories in height and a private garage for not more than three cars.
2. No building shall be erected, placed or altered on the premises until the construction plans and specifications and a plan showing the location of structure have been approved by the architectural control committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on the premises unless similarly approved. Approval shall be as provided in paragraph 8.
3. No trucks shall be parked or allowed to remain on the premises (except for the purpose of delivering merchandise to or pick-up from the premises) unless they shall be garaged in an enclosed and covered structure approved by the architectural control committee.
4. No noxious or offensive activity shall be carried on upon the premises, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighbourhood.
5. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.
6. No sign of any kind shall be displayed to the public view on the premises except one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the advertising and sales period.
7. No animals, livestock, poultry of any kind shall be raised, bred kept on any lot, except that dogs, cats or other household pets may, provided that they are not kept, bred, or maintained for any commercial purpose.
8. The architectural control committee is composed of Don L. Dise, Aurora, Illinois, Jack Von Ehr, Aurora, Illinois and Mikol Dise, Aurora, Illinois. A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee or its designated representative shall be entitled to any compensation for services performed pursuant to this covenant.
9. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five years from the date of registration of this Transfer after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by the majority of the then owners of lots at Cayman Kai, Grand Cayman shall provide for the revocation or variation of said covenants in whole or in part.

Cayman Island Basic Industries Ltd.

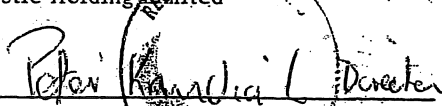

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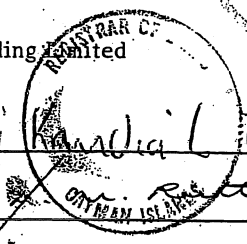





Castle Holding Limited

By:-



Secretary