

R-513

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
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APR 23. 1992 08:54 AM

Doc No(s) 92-062936

/s/ S. FURUKAWA  
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$0.00

REJECTION  
ATTACHED

REGULAR SYSTEM

LAND COURT SYSTEM

Return by Mail (X) Pickup ( ) To:

Mike Sakai #402  
201 Merchant St.  
Honolulu, HI. 96813

JF 14,050

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR TIME INTERVAL OWNERSHIP AT KAHANA FALLS

This Declaration is made this 4th day of MARCH,  
1992, by KAHANA FALLS LIMITED PARTNERSHIP, a Hawaii limited  
partnership, whose address is 107 Hakui Loop, Lahaina, Hawaii  
96761, hereinafter referred to as "Declarant".

RECITALS

Whereas, the Declarant is the owner of the apartment(s)  
in the KAHANA FALLS condominium project located in Kahana, Maui,  
Hawaii ("Project"), which apartment(s) is more particularly  
described in Exhibit "A" attached hereto and incorporated herein  
by this reference; and

Whereas, the Declarant intends to establish a time  
interval ownership plan called "KAHANA FALLS" time interval  
ownership plan and further intends to offer for sale those  
apartments listed in Exhibit "A" which it owns and others that it  
may add to or annex to the plan from time to time;

NOW THEREFORE, Declarant hereby declares that all apartments in the Project subject to this Declaration of Covenants, Conditions and Restrictions ("CC&R" or "CC&R's") are held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following terms and conditions, all of which shall be deemed to be covenants running with the land and shall be binding upon all parties having or acquiring any right, title or interest in the units that are made subject to these CC&R's.

#### ARTICLE I

#### GENERAL PROVISIONS

Section 1. Name. The name of the time interval ownership plan shall be "KAHANA FALLS".

Section 2. Definitions. The following terms shall have the following meanings:

a. "Apartment" means an apartment or unit that is described in Exhibit "A" which may be added to or subtracted from time to time. When a reference is made to a unit type it refers to a two bedroom or one bedroom type apartment. The various unit types and a description of the (if more than one) Apartment(s) are set forth in Exhibit "B" attached hereto and incorporated herein by reference.

b. "Bureau of Conveyances" means the Bureau of Conveyances, State of Hawaii.

c. "Buyer" means the person named as the Buyer in a Purchase Agreement which has not been terminated or consummated.

d. "Condominium Declaration" means the Declaration of Condominium Property Regime and By Laws for the KAHANA FALLS dated May 2, 1991, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 91-61027, as amended from time to time, and any House Rules adopted pursuant thereto and the Bylaws of the Association of Apartment Owners of Kahana Falls recorded as Document No. 91-61028, as amended from time to time. The Association for the Condominium Property Regime and its Board of Directors and the apartment owner shall be preceded by the word "Condominium" and known respectively as the Condominium Association, Condominium Board and Condominium Owner.

e. "Owner" means any person owning a Time Interval including the Declarant's ownership of unsold Time Intervals, and

a Buyer whom is conveyed and/or assigned a Time Interval which shall include a purchaser under an Agreement of Sale, their respective heirs, successors and assigns, as the case may be. Any mortgagee of a Time Interval that is conveyed and/or assigned the voting rights of an Owner shall be considered an owner for voting purposes.

f. "Plan Manager" means the person who manages the Time Intervals in the Kahana Falls time interval ownership plan and for the Time Interval Owners Association.

g. "Project" means the Kahana Falls condominium project as described in the Condominium Declaration.

h. "Time Interval Owners Association" or "Time Interval Association" shall refer to the association of owners of Time Intervals in the Kahana Falls time interval plan (the Kahana Falls Time Interval Owners Association or Time Interval Association). All owners of Time Intervals shall automatically become members of the Time Interval Association. The Time Interval Association shall be responsible for the management of the Kahana Falls time interval ownership plan. The Declarant shall act in place of the Time Interval Association until the Time Interval Association is formed and is functioning or if the Time Interval Association fails to act, then the Declarant may act on behalf of the Association. It has or will be incorporated as a non-profit Hawaii corporation.

i. "Time Interval Board" means the Board of Directors for the Kahana Falls Time Interval Owners Association.

j. "CC&R" and "CC&R's" means this Declaration of Covenants, Conditions and Restrictions for Time Interval Ownership at Kahana Falls, as the same may be amended from time to time, which will also be referred to as "Time Interval Declaration".

k. "Time Interval" or "Interval" means a 1/51st undivided interest in an Apartment and its appurtenant common interest in the common elements of the Project for each Time Interval owned which entitles an Owner to the exclusive use during a Time Period for the use, occupancy, or possession of the Apartment described in the Owner's Time Interval Conveyance Document (or the same type of apartment) and the CC&R's. If the Time Interval is an "every other year" Interval, then the phrase "Time Interval" means a 1/102nd undivided interest in an Apartment and its appurtenant common interest in the common elements of the Project for each every other year Time Interval owned which entitles an Owner to the exclusive use during a Time Period for the use, occupancy, or possession of an Apartment but only during an

odd or even year, as described in an Owner's Time Interval Conveyance Document or such other use arrangement as may be provided for by the Rules and Regulations.

l. "Time Interval Plan" means the Kahana Falls time interval ownership plan or program in which the use, occupancy, or possession of the Apartment(s) described in the CC&R's (as amended from time to time) circulates among various owners for the Time Intervals that they have acquired.

m. "Time Interval Purchase Agreement" means the purchase agreement for a Time Interval entered into between the Declarant, as Seller, and the Buyer, as purchaser.

n. "Rules and Regulations" means the Rules and Regulations for the Time Interval Plan adopted initially by the Declarant pursuant to this CC&R which Rules and Regulations can be subsequently amended from time to time by the Declarant for the initial five (5) years subsequent to the recording and filing of the CC&R and thereafter by the Board as the need arises from time to time; provided that no amendment can diminish the rights of an Owner or interfere with the use rights of an Owner.

o. "Time Interval Conveyance" means a conveyance of a fractionalized interest in an Apartment.

p. "Time Period" means the maximum period of 7 consecutive days and 7 consecutive nights (or if a split week, a period of at least 3 consecutive days and nights for a cumulative total of 7 days for each year) for each Time Interval owned, in which an Owner has prior rights to or reserved the use of an Apartment in accordance with the reservation procedures set forth in the Rules and Regulations. The Time Period begins and ends on the day as designated for each Time Period as set forth in the Rules and Regulations, as amended from time to time.

Section 3. Purpose. The purpose of the Time Interval Owners Association is to provide the means whereby the use, possession and ownership of intervals in the Project that are submitted to the Time Interval Ownership Plan are governed.

## ARTICLE II

### OWNERSHIP AND VOTING RIGHTS

Section 1. Qualifications. The members of the Time Interval Association shall consist of Owners as defined herein.

Section 2. Transfer of Ownership. The right of each Owner to participate in the Time Interval Owners Association is appurtenant to and inseparable from his ownership of a Time Interval and shall be automatically transferred upon any authorized conveyance of the ownership of his Time Interval to any grantee or transferee whether by way of gift, bequest, conveyance or otherwise. The purchaser under an Agreement of Sale from the Declarant or an Owner for a Time Interval shall be considered the Owner under this CC&R. The Time Interval Owners Association at its option need not recognize any transfer in which the Owner is in default under his obligations in the Time Interval Purchase Agreement, the Time Interval Conveyance, any provisions of the CC&R's, the Rules and Regulations or Condominium Declaration and/or By-Laws. The Time Interval Owners Association is authorized to charge a reasonable sum to have the records of the Time Interval Owners Association reflect the change in ownership and also the change in mailing of a newsletter and other information relating to the Time Interval Ownership Plan and the Time Interval Owners Association.

Section 3. Nature of Ownership. For each Time Interval owned, an Owner will have a 1/51st undivided interest in an Apartment, as a tenant in common with other owners of the Apartment. If the Time Interval is an every other year interest, an Owner will have a 1/102nd undivided interest in an Apartment, as a tenant in common with the other owners of the Apartment. Each Apartment has an appurtenant common interest in the Project which common interest is set forth in Exhibit "A".

Section 4. Use Rights (Every Year Time Interval). An Owner shall have the right to use and occupy an Apartment for each Time Interval owned in accordance with the following terms, covenants, and conditions:

a. If the Owner has a floating time period and where he has paid his common expense and met his other obligations according to the Rules and Regulations, he may reserve the Time Period or any alternative thereto for which he desires to use an Apartment in accordance with the procedures established by the Rules and Regulations. An owner may confirm and use only the number of Time Period(s) he owns.

b. If the Owner has a fixed time period and where he has paid his common expense and met his other obligations according to the Rules and Regulations, he may use an Apartment without making any reservation.

c. A reservation must be made by U.S. mail or such other method as established by the Rules and Regulations.

d. When an Apartment is not occupied or reserved, an Owner may make a reservation for a Time Period for each Time Interval he owns as set forth in the Rules and Regulations. The provisions of this subparagraph are included to enable Owners to have the benefit of advanced planning as well as to permit occupancy on short-term notice of Apartments which might otherwise remain unoccupied.

e. The Time Interval Owners Association will have the right, but not the obligation, to contract with a Plan Manager to utilize any unreserved weeks during the 89 days prior to the first day of a Time Period for the purpose of renting to non-owners of Time Intervals in order to pay for the Plan Manager's services in connection therewith. The foregoing shall be subject to any right on the part of the Declarant to use or reserve such unreserved Time Periods.

f. The Time Interval Owners Association shall provide for a compensatory use period or monetary compensation for any Owner who is unable to use his Time Period and Interval due to error by the Time Interval Owners Association or Plan Manager.

g. If an Owner fails to use his Time Period within a calendar year, that Time Period may not be accumulated. Notwithstanding the failure to use the Time Period the Owner will be required to pay his common expenses when due.

h. The Declarant by the Rules and Regulations shall establish the Check-in-Time and Check-out-Time for the Time Periods. The Rules and Regulations will provide for a week commencing on a certain day in the afternoon for check in and the following week in the morning as the Check-out-Time; provided that shorter time periods of no less than 3 consecutive days may be permitted as provided in the Rules and Regulations.

i. If any Owner fails to vacate an Apartment at the end of his Time Period and that thereby prevents another person from using or occupying the succeeding Time Period, then and in such event the Owner shall be assessed a cost equivalent to 300% of the daily rental per day, as determined by the Plan Manager, for the Apartment he fails to vacate. The assessment will be utilized for purposes of obtaining equivalent, temporary accommodations for the persons entitled to use the

Apartment. The Time Interval Owners Association may further provide additional or alternative penalties as set forth in the Rules and Regulations.

Section 5. Use Rights, Every Other Year Time Interval. An Owner shall have the right to use and occupy an Apartment for each Time Interval owned that is an every other year interval during a Time Period reserved or occupied in accordance with Section 4 above except only during an odd or even as the case may be. The Rules and Regulations may provide for split week use whereby an every other year interval Owner will be able to use a portion of the Time Period in an odd year and a portion of the balance in an even year, provided the total number of days in a two year period shall not exceed seven days for each Time Interval Owner. The Owners Time Interval Purchase Agreement and Time Interval Conveyance will indicate whether the Owner owns an every other year Time Interval or a whole Time Interval. If an Owner owns an odd year Time Interval, the Time Period may only be in an odd year. If an Owner owns an even year Time Interval, then the Time Period may only be in an even year.

Section 6. Voting Rights. Each Owner of a Time Interval shall have voting rights. An Owner shall be entitled to one vote for each Time Interval he owns or one-half vote for each every other year Time Interval he owns. When there is more than one Owner of a Time Interval, the one Owner present can vote on behalf of all other Owners of the Time Interval and in the event there is more than one Owner present and/or there is a dispute in which there is no majority to cast a vote for all of the Owners of the Time Interval then that vote will be deemed to be an abstention.

Section 7. Cumulative Voting. In any election of the Time Interval Board every Owner entitled to vote at such an election shall have the right of cumulative voting. The candidates receiving the highest number of votes shall be deemed elected.

Section 8. Partition. An Owner shall have no legal or equitable right to request or initiate partition proceedings regarding any Time Interval, Apartment and/or common elements of the Project.

### ARTICLE III

#### GOVERNMENT

Section 1. Association. The Time Interval Owners Association organized hereunder shall govern the Apartments that

are a part of the Time Interval Ownership Plan. The Time Interval Owners Association shall own all Apartment furnishings.

Section 2. Place of Meeting. All meetings of the Owners shall be held in the office of the Time Interval Owners Association in Kahana, Maui, Island and County of Maui, State of Hawaii, unless otherwise set forth in the notice of the meeting.

Section 3. Annual Meeting of Owners. There will be an annual meeting of the Owners entitled to vote, as set by the Time Interval Board or the President, in the first ten months following the beginning of each calendar year unless otherwise notified by the Time Interval Board, President or the Plan Manager.

Section 4. Special Meeting of Owners. A special meeting of the Owners may be called by the President at any time on his own initiative or upon the request of fifteen percent of the Owners entitled to vote at such meeting.

Section 5. Notice of Meetings. Notice of a meeting shall be mailed to each Owner at least twenty-one (21) days prior to the meeting and at such meeting there shall be considered only such business as is specified in the notice of the meeting.

Section 6. Quorum for Meeting. At all meetings of the Time Interval Association either regular or special, thirty percent of all Owners entitled to vote and in good standing as of the date of the notice of the meeting shall constitute a quorum. Quorum may be established by person and/or by proxy. The Declarant shall be entitled to vote the Time Intervals that it owns under this CC&R.

Section 7. Lack of Quorum. If a quorum is not present, the presiding officer may adjourn the meeting to a day and hour fixed by him.

Section 8. Proxy. Every Owner entitled to vote shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such Owner and filed with the Secretary of the Time Interval Owners Association at least two business days prior to the date of the meeting at which the proxy is to be exercised. The proxy may be good for up to three years and applies to all meetings within that period from the date of the proxy unless otherwise restricted by law and then it shall be good only for such meeting to which the proxy pertains. A proxy is revocable at any time by sending written notice to the Secretary at anytime prior to a meeting. The presence of the Owner in person is effective to suspend the effectiveness of the proxy while said Owner exercises his right to vote.



Section 9. Order of Business. At all meetings of the Time Interval Owners Association the order of business unless otherwise indicated in the notice shall be as follows:

- (a) Call to Order;
- (b) Establishment of Quorum;
- (c) Reading of minutes of prior meeting;
- (d) Reports of officers;
- (e) Reports of committees and Plan Manager;
- (f) New business as specified in the notice of meeting;  
and
- (g) Old business.

#### ARTICLE IV

##### BOARD OF DIRECTORS

Section 1. Number, Qualification, Term. There shall be three or more directors but not to exceed twelve directors except as otherwise provided by law, the initial number to be set by the Declarant and thereafter the same to be established at the annual meeting of the Time Interval Owners Association. The members of the Time Interval Board must be an Owner which shall include persons affiliated with the Declarant, or officers or employees of Declarant so long as Declarant is an owner of Time Interval and/or its agent(s). At least one-third of the directors elected at each annual meeting shall serve for three years. The directors shall serve for a term of three years except those elected at the first annual meeting, one-third of whom shall serve for a term of one year, one-third for two years and one-third for three years.

Section 2. Removal, Vacancies. The entire Time Interval Board or any individual director may be removed from office, with or without cause, at any duly noticed and held annual or special meeting of the Time Interval Owners Association, at which a quorum is present, by a majority of the total votes present at such meeting either in person or by proxy and entitled to vote.

Section 3. Place of Meeting. All meetings of the Time Interval Board shall be held in Kahana, Maui, State of Hawaii, or

any other place designated by the Time Interval Board or its President. Meetings of the Time Interval Board shall be open to all Owners. Telephonic board meetings conducted through a telephone conference call among Time Interval Board members shall be deemed to be held at the place of the originator of the telephonic conference.

Section 4. Organization Meeting of the Time Interval Board. Immediately after the annual meeting of the Time Interval Owners Association, the Time Interval Board shall hold a regular meeting at the same place for the purpose of organization, election of officers and the transaction of other business. Written notices of the organization meeting and regular meetings of the Time Interval Board shall be given by the Secretary or Plan Manager at least 21 days prior to the scheduled time of such meeting by direction of the Declarant or the President. Any notices shall be considered received 72 hours after the deposit in the United States mail or telegraphed.

Written notices of the time and place of special meetings and of the nature of any special business to be considered shall be given to each director at least 5 days prior to the scheduled time of such meeting by the Secretary or Plan Manager at the direction of the President, Vice President or any two directors and shall be delivered personally or sent by letter or by telegram, postage and/or charges prepaid, addressed to him at his address as it is shown upon the records of the Time Interval Owners Association, in case such notice is mailed or telegraphed, and it shall be deemed received 72 hours after being so deposited in the United States mail or so delivered to the telegraph company in the town or city where the Plan Manager is located.

Section 5. Quorum, Waiver of Notice. The transaction of any business at any meeting of the Time Interval Board, however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held, regularly called and noticed, if a quorum is present and there is on file a waiver, consent or approval of the holding of such meeting of directors who are not present, which are made a part of the minutes of the meeting.

Section 6. Telephonic Board Meeting or Action Without Meeting. Any action required or permitted by law to be taken by the Time Interval Board, may be taken through a telephonic board meeting, or without a meeting if all members of the Time Interval Board shall consent in writing to such action. Such written consent of action without meeting shall be filed with the minutes of the proceedings of the Time Interval Board and shall have the same force and effect as a unanimous vote of the Directors obtained

at a duly called and noticed meeting. The telephonic board meeting shall reflect the actions taken by the Time Interval Board in writing.

Section 7. Powers of the Board. The Time Interval Board is authorized to take all actions of the Time Interval Owners Association including the power to adopt, amend or repeal the By Laws, appoint a Plan Manager pursuant to a written agreement for a term of up to 5 years with such powers as the Time Interval Board may authorize, appoint committees and to carry on all of the activities of the Time Interval Owners Association. The Time Interval Board is authorized to adopt rules and regulations governing the use of the Apartments under this Time Interval Plan. The Time Interval Board shall authorize the person who is to act on behalf of the Time Interval Owners Association in the Condominium Association of KAHANA FALLS Condominium. Provided however that if a majority of Owners of Time Interval (more than 25 Time Intervals) in an Apartment decide to cast their own vote in a Condominium Association meeting, then in such event the Time Interval Board shall not be able or authorized to act on behalf of such Owners in an Apartment. At any such Condominium Association meeting, the majority vote of Owners in an Apartment shall determine the vote of the Apartment and shall cast such vote at the Condominium Association meeting.

Section 8. Accountant and Legal Counsel. The Time Interval Board may appoint and retain an accountant or accounting firm and/or legal counsel or counsels on retainer at the costs and expenses of the Time Interval Owners Association to assist in the administration and management of the Time Interval Owners Association and Time Interval Board.

Section 9. Conflict of Interest. Members of the Time Interval Board may vote upon any matters provided that any conflict of interest is disclosed and noted in the minutes of the meeting.

## ARTICLE V

### OBLIGATIONS OF OWNERS

Section 1. Creation of Common Expenses. Declarant for the Time Interval Owners Association and the Time Interval Board after its organization as long as Declarant is an Owner, shall have the power from time to time to create the obligation of common expenses which shall be due and payable by an Owner on a budget initially established by the Declarant and thereafter as annually adjusted by the Plan Manager and approved by the then Time Interval

Board. No Owner may waive or otherwise avoid liability for the common expense by non-use of his Time Interval or any part thereof or by any abandonment thereof. The assessment of the common expense together with interest, costs and reasonable attorney's fees shall be the personal obligation of each Owner at the time such assessment becomes due and payable and shall be a lien and charge upon the Time Interval of the Owner against which the assessment is made. The Declarant shall not be required to pay the common expenses as provided herein for any Apartments in which no Time Intervals have been sold; however, Declarant shall be responsible for the maintenance of such Apartment(s) which shall include the payment of any maintenance fees assessed by the Condominium Association. In the event only a portion of an Apartment has been conveyed to Owners, the Declarant shall be responsible for the common expenses for any unreserved Use Periods used or utilized by the Declarant; provided that such common expenses shall be limited to ordinary repairs, maintenance and upkeep of the Apartments.

Section 2. Allocation of Expenses. For each Time Interval owned, an Owner will be responsible for 1/51st of the total cost of maintaining an Apartment for a whole Time Interval and a 1/102nd interest of the total cost of maintaining an Apartment for an every other year Time Interval. Every other year Owners will be assessed in the same year that their time period is in. The total cost of maintaining an Apartment includes but is not limited to Condominium Association maintenance fees, taxes, management fees, clearing services and expenses relating to the furniture, appliances and other personal property provided by the Time Interval Owners Association for the use and benefit of the Owners. For the purpose of allocating the maintenance fees between apartments, each apartment's common interest shall be the same as provided in the Condominium Declaration, as amended from time to time. The cost allocable to a particular apartment will be determined by dividing an apartment's common interest by the sum of the common interest of all apartments in the Time Interval Plan.

Section 3. Special Assessments. If the basic common expenses with respect to the Time Interval Plan is, or will become inadequate to meet all expenses incurred by the Time Interval Association, the Time Interval Board at its meeting shall determine the amount of such inadequacy, prepare and distribute a notice of special assessment against each Owner explaining the need and the necessity of the special assessment, and direct the Plan Manager to collect the assessment. All every other year Owners will be assessed the special assessment in the same year whether they own odd or even year Time Intervals.

Section 4. Enforcement of Restrictions. In amplification and not in limitation of the powers of the Time Interval Board provided in Section 7, Article IV above, the Time Interval Owners Association through the Time Interval Board and Plan Manager shall have the following rights and powers:

(a) In General. The Time Interval Owners Association shall have full power and authority to enforce compliance with the Condominium Declaration, the CC&R's, and the Rules and Regulations, including the right to bring an action for damages, an action to enjoin the violation of or specific performance of any violation of the aforesaid, enforce any lien, appoint a receiver, and the right to take possession of the Time Interval of any defaulting Owner. The Time Interval Owners Association shall have the right to recover a reasonable collection fee to collect delinquent and reasonable attorney's fees incurred and/or expended in furtherance of such responsibilities. All sums payable by an Owner and delinquent for 14 days shall bear interest at 12% per annum and shall be subject to a late payment penalty fee. The penalty fee shall be established by the Rules and Regulations. All enforcement powers of the Time Interval Owners Association shall be cumulative. Common and special assessments may be billed monthly, quarterly, or annually, as determined by the Plan Manager or Time Interval Board.

(b) Suspension of Privileges. If any Owner shall be in breach of the Condominium Declaration, the CC&R's, or the Rules and Regulations, the Time Interval Owners Association shall give written notice of such violation and give such Owner 14 days from the date of the notice to cure such default. Such written notice although not releasing or waiving any future obligations of the Owner will suspend the right of such Owner to reserve or use his Time Period and to participate in any vote or other determination provided for herein. If any such suspension is based on an act or omission that continues and remains incurred, an Owner shall be given an additional 14 days written notice of suspension and termination as provided in subparagraph (c) hereafter. If the Owner disputes such suspension, then the Plan Manager shall receive such evidence from the Owner supporting why his privileges should not be suspended.

If the Plan Manager shall determine that based on the evidence submitted to it that the Owner's use rights shall be suspended and if the Owner further disputes the determination of the Plan Manager, the Owner shall have the right within 30 days to appeal to the Time Interval Board. The Time Interval Board, after review of the record and if requested by the Owner, will hold a hearing and accept submittal of any further evidence it deems

relevant and material and make a determination of whether such privileges should be suspended. No determination by the Time Interval Board shall be made except by a majority of the Time Interval Board present at a meeting with at least a quorum of the Time Interval Board.

(c) Enforcement and Termination by Lien. The Time Interval Owners Association shall have a secured lien, in the nature of a mortgage with private power of sale of each Time Interval as security for the prompt and faithful performance of each Owner's obligation under the Condominium Declaration, the CC&R's and the Rules and Regulations. In the event of violation, the Time Interval Owners Association shall follow the procedure set forth in subsection (b) above. If such Owner fails or refuses to cure such default within 14 days, then and in such event the Time Interval Owners Association may either file a lien with the Bureau of Conveyances or the Office of the Assistant Registrar, Land Court, State of Hawaii, as the case may be, or give another 14 days' written notice to the Owner that the Time Interval Owners Association intends to exercise its rights of the private power of sale to sell or otherwise dispose of the Owner's interest in the Time Interval to the general public at the end of the 14 days. The Time Interval Owners Association itself may purchase it after a private sale announcement duly published once each week for two successive weeks in a newspaper of general circulation in the State of Hawaii specifying the time, place and conditions of the private sale. Once such sale is made, the Time Interval Owners Association will become the attorney-in-fact coupled with an interest of the Owner and may transfer the Time Interval to any new owner or to the Time Interval Owners Association as the case may be.

#### ARTICLE VI

#### ALTERATION, DAMAGE, DESTRUCTION, CONDEMNATION

Section 1. In General. The Time Interval Owners Association in the event of any damage or destruction of the Apartments or the furniture, fixtures or furnishings shall cause such damage or destruction to be repaired and shall use the proceeds from any insurance or condemnation proceeds to repair such damage. In the event of damage or destruction caused by the intentional or negligent act or omission of an Owner, his family, guest, invitee or tenant, the cost of such repair or the amount of such deficiency and any interest and penalty provided under the Rules and Regulations shall be a personal charge and paid by such Owner.

Any alteration to the Apartments and/or common elements not conducted at the direction of the Time Interval Board, is strictly prohibited. The Time Interval Board, may fine any Owner altering an Apartment and/or common element without the Time Interval Board's approval.

Section 2. Insurance. The Time Interval Owners Association shall obtain such insurance as is necessary to protect the Owners' interests in the Apartments and in the event of any deficiency, such deficiency shall be made up by the Owner(s) in proportion to their interests in the Apartments.

Section 3. Uninsured Casualty. In the event of any uninsured casualty which creates an obligation of repair or replacement on the part of the Time Interval Owners Association, the Time Interval Owners Association shall have the power to assess each Owner the cost to correct the uninsured casualty in proportion to their interest in the Apartment.

Section 4. Condemnation. In the event of any condemnation of one or more Apartments the Time Interval Owners Association shall use the proceeds of the condemnation to restore or replace the Apartment(s) condemned and if such is not practicable, then the proceeds for a particular Apartment shall be distributed to the Owners in proportion to their interest in the Apartment in which they have an interest as set forth in the Time Interval Conveyance document and thereafter the rights of the Owners in the Apartment shall terminate.

## ARTICLE VII

### RESERVATIONS BY DECLARANT

Section 1. In General. The Declarant shall have the authority to adopt these CC&R's and the Rules and Regulations and other matters necessary to implement the establishment of the Time Interval Plan and any amendments thereto. The Declarant has the authority on behalf of the Time Interval Owners Association to enter into such contracts with the Condominium Association and the Plan Manager for carrying out the duties and obligations necessary for the management, upkeep and maintenance of the Project for such term as is deemed appropriate up to and including 5 years.

Section 2. Easements and Rights. The Declarant reserves the right to obtain such easements and rights from the Condominium Board and Condominium Association for such period as is agreed upon

from time to time by the Condominium Board to carry on sales and marketing activities and to operate the Time Interval Plan.

Section 3. Sales. The Declarant reserves to itself, and its Sales Agents, Acquisition Agents, Plan Managers, employees and its agents the authority to conduct promotional, sales and other activities necessary to sell the Time Intervals and to furnish and utilize the Apartments subject always to the rights of an Owner to use an Apartment.

Section 4. Spaces, Improvements and Amenities. The Declarant reserves the right to rent such space, improve and/or construct such improvements and such other amenities on or off site as it deems necessary for the sales, marketing and operation of the Time Interval Plan; provided however that no such activities interferes with the use by an Owner of an Apartment.

Section 5. Responsibility for Payment of Expenses. Any of the foregoing activities which relate to real property taxes, management, utilities, maintenance and upkeep as set forth in the common expenses and any other charges, assessments and penalties as set forth herein shall be paid by the Owners. Any other expenses shall be paid for by the Time Interval Owners Association except for such expenses that the Declarant agrees in writing to assume by agreement with the Time Interval Owners Association or which are incurred and chargeable to any Sales Agents or Acquisition Agents.

## ARTICLE VIII

### MISCELLANEOUS

Section 1. Annexation and/or Removal of Apartments. The Declarant shall have the authority to annex additional Apartments to and/or withdraw Apartments from these CC&R's from time to time in its sole discretion; provided that in no event may an Apartment be removed if a Time Interval has been purchased by an Owner. The Apartments may include any of the various apartments and apartment types within the Project.

Section 2. Amendment of Declaration. These CC&R's may be amended by Declarant so long as there are any unsold Time Intervals in an Apartment subject to the terms of these CC&R's, as amended; provided that Declarant may not adopt any amendment that would diminish or interfere with the rights of an Owner. The right of Declarant to amend these CC&R's shall be suspended whenever 75% or more of all Apartments listed in Exhibit "A" which shall include



the Apartments which have been annexed in accordance with Section 1 above, as amended from time to time, have been conveyed to the Owners; provided that the Declarant shall continue to have the right to delete unsold Apartments or add additional Apartments to Exhibit "A"; and then only during the periods Declarant's rights to amend are suspended will the Time Interval Owners Association have the authority to amend the CC&R's, except only Declarant shall have the right to amend Exhibit "A" (as amended) during the period there are unsold Time Intervals in any of the Apartments described in Exhibit "A" (as amended); provided further that the Declarant has the right to amend the CC&R if such amendment does not affect, interfere with or impair any existing Owners rights and such amendment only affects the Apartments to be annexed to the Time Interval Plan. Subject to the Declarant's rights described above, the Time Interval Owners Association may amend the CC&R's by a majority vote of Owners present in person or by proxy at a regular meeting or special meeting where a quorum is present; provided that no amendment may diminish or interfere with the rights of any Owner.

Section 3. Association Records. The Time Interval Owners Association shall keep at the Plan Manager's office a minute book, record of Owners, and records of the Time Interval Owners Association. Each director shall have the absolute right at any reasonable time to inspect such records which inspection may be made in person or by an authorized agent or attorney including the right to make extracts, but not reproduce entire records of the Time Interval Owners Association; provided that upon reasonable advance written notice and submission of a deposit to defer duplication cost, a director may request the records of the Time Interval Owners Association. The minutes of all of the meetings of the Time Interval Owners Association and the Time Interval Board shall be available for inspection by the Owners during such reasonable hours as are established by the Plan Manager.

Section 4. No Corporate Seal. No corporate seal is required and if a corporate seal is obtained it shall be circular in form and shall have inscribed thereon the name of the Time Interval Owners Association, the date of its formation and the "State of Hawaii".

Section 5. Compensation of Officers and Directors. Any officer, director or Owner serving on committees or performing duties required under this CC&R may receive reasonable compensation for services actually rendered to the Time Interval Owners

Association, but not to be compensated merely for holding office. Such director's fee, if any, shall not exceed \$50.00 per meeting or a total of \$200.00 per year. A director may be allowed to defray partially his out-of-pocket transportation and lodging expenses as established in the Rules and Regulations, from time to time.

Section 6. Indemnification. Every officer, director or Owner serving on committees or performing duties required under these CC&R's shall be indemnified by the Time Interval Owners Association against all reasonable costs, expenses and liabilities (including attorney's fees) actually and necessarily incurred by or imposed upon him in connection with or resulting from any claim, action, suit, proceeding, investigation or injury of whatever nature in which he may be involved as a party or otherwise by reason of his being or having been such officer, director or committee member, whether or not he continues to be such director, officer, or committee member at the time of incurring or the imposition of such costs, expenses or liabilities, except in relation to matters as to which he shall be finally adjudged in such action, suit, proceeding, investigation or inquiry to be liable for willful misconduct, willful neglect or willful negligence toward the Time Interval Owners Association in the performance of his duties as such officer, director or committee member. In the absence of such final adjudication of the existence of such liability the Time Interval Owners Association, Time Interval Board and each director and officer and committee member may conclusively rely upon an opinion of legal counsel selected by or in the matter designated by the Time Interval Board as to the matter in issue. The foregoing right of indemnification shall be in addition to and not in limitation of all other rights to which such person may be entitled as a matter of law, and shall inure to the benefit of the legal representatives of such person.

IN WITNESS WHEREOF, these CC&R's were executed the day and year first above written.

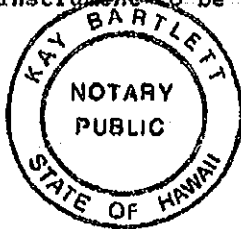
KAHANA FALLS LIMITED PARTNERSHIP

By S.C.I. ENTERPRISES, INC.  
Its General Partner

By   
Its President

STATE OF HAWAII  
*City & County of Honolulu*

On this 4th day of MARCH, 1992, before me appeared MARK H. IVES, to me personally known, who, being by me duly sworn, did say that he is the President of S.C.I. ENTERPRISES, INC., a Nevada corporation, the general partner of KAHANA FALLS LIMITED PARTNERSHIP, a Hawaii limited partnership, named in the foregoing instrument; that said instrument was executed by said corporation as the duly authorized general partner of and on behalf of KAHANA FALLS LIMITED PARTNERSHIP; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was so executed by said corporation by authority of its Board of Directors; and said officer acknowledged said instrument to be the free act and deed of said partnership.



*Kay Bartlett*  
\_\_\_\_\_  
Notary Public, State of Hawaii  
My commission expires: 9-29-94

KF151CC8R

(030292)

EXHIBIT "A"

FIRST: Apartment No. 105, of that certain condominium project known as "KAHANA FALLS", as shown on Condominium File Plan No. 1494 and described in the Declaration of Condominium Property Regime dated May 2, 1991, recorded May 14, 1991, as Document No. 91-61027, as the same was or may be amended from time to time, in the Bureau of Conveyances, State of Hawaii.

TOGETHER WITH appurtenant easements as follows:

- (A) Non-exclusive easement in the common elements designed for such purposes for ingress to, and egress from, utility services for and support of said apartment; in the other common elements for use according to their respective purposes.
- (B) Exclusive easements to use the limited common elements appurtenant to said apartment designated for its exclusive use by the Declaration.

SECOND: An undivided 1.5597% interest, in all common elements of the Project and in the land, as established for said apartment by the Declaration, or such other percentage interest as hereinafter established for said apartment by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof.

Being the real property conveyed to Kahana Falls Limited Partnership, a Hawaii limited partnership, by Apartment Deed dated January 27, 1992, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 92-13545.

The land on which said condominium is located is more fully described in the Declaration of Condominium Property Regime dated May 2, 1991, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 91-61027, as the same was or may be amended from time to time.

EXHIBIT "A"

FIRST: Apartment No. 202, of that certain condominium project known as "KAHANA FALLS", as shown on Condominium File Plan No. 1494 and described in the Declaration of Condominium Property Regime dated May 2, 1991, recorded May 14, 1991, as Document No. 91-61027, as the same was or may be amended from time to time, in the Bureau of Conveyances, State of Hawaii.

TOGETHER WITH appurtenant easements as follows:

- (A) Non-exclusive easement in the common elements designed for such purposes for ingress to, and egress from, utility services for and support of said apartment; in the other common elements for use according to their respective purposes.
- (B) Exclusive easements to use the limited common elements appurtenant to said apartment designated for its exclusive use by the Declaration.

SECOND: An undivided 1.2403% interest, in all common elements of the Project and in the land, as established for said apartment by the Declaration, or such other percentage interest as hereinafter established for said apartment by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof.

Being the real property conveyed to Kahana Falls Limited Partnership, a Hawaii limited partnership, by Apartment Deed dated January 27, 1992, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 92-13546.

The land on which said condominium is located is more fully described in the Declaration of Condominium Property Regime dated May 2, 1991, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 91-61027, as the same was or may be amended from time to time.

EXHIBIT "A"

FIRST: Apartment No. 309, of that certain condominium project known as "KAHANA FALLS", as shown on Condominium File Plan No. 1494 and described in the Declaration of Condominium Property Regime dated May 2, 1991, recorded May 14, 1991, as Document No. 91-61027, as the same was or may be amended from time to time, in the Bureau of Conveyances, State of Hawaii.

TOGETHER WITH appurtenant easements as follows:

- (A) Non-exclusive easement in the common elements designed for such purposes for ingress to, and egress from, utility services for and support of said apartment; in the other common elements for use according to their respective purposes.
- (B) Exclusive easements to use the limited common elements appurtenant to said apartment designated for its exclusive use by the Declaration.

SECOND: An undivided 1.5597% interest, in all common elements of the Project and in the land, as established for said apartment by the Declaration, or such other percentage interest as hereinafter established for said apartment by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof.

Being the real property conveyed to Kahana Falls Limited Partnership, a Hawaii limited partnership, by Apartment Deed dated January 27, 1992, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 92-13547.

The land on which said condominium is located is more fully described in the Declaration of Condominium Property Regime dated May 2, 1991, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 91-61027, as the same was or may be amended from time to time.

EXHIBIT "A"

FIRST: Apartment No. 402, of that certain condominium project known as "KAHANA FALLS", as shown on Condominium File Plan No. 1494 and described in the Declaration of Condominium Property Regime dated May 2, 1991, recorded May 14, 1991, as Document No. 91-61027, as the same was or may be amended from time to time, in the Bureau of Conveyances, State of Hawaii.

TOGETHER WITH appurtenant easements as follows:

- (A) Non-exclusive easement in the common elements designed for such purposes for ingress to, and egress from, utility services for and support of said apartment; in the other common elements for use according to their respective purposes.
- (B) Exclusive easements to use the limited common elements appurtenant to said apartment designated for its exclusive use by the Declaration.

SECOND: An undivided 1.2403% interest, in all common elements of the Project and in the land, as established for said apartment by the Declaration, or such other percentage interest as hereinafter established for said apartment by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof.

Being the real property conveyed to Kahana Falls Limited Partnership, a Hawaii limited partnership, by Apartment Deed dated January 27, 1992, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 92-13548.

The land on which said condominium is located is more fully described in the Declaration of Condominium Property Regime dated May 2, 1991, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 91-61027, as the same was or may be amended from time to time.

EXHIBIT "A"

FIRST: Apartment No. 607, of that certain condominium project known as "KAHANA FALLS", as shown on Condominium File Plan No. 1494 and described in the Declaration of Condominium Property Regime dated May 2, 1991, recorded May 14, 1991, as Document No. 91-61027, as the same was or may be amended from time to time, in the Bureau of Conveyances, State of Hawaii.

TOGETHER WITH appurtenant easements as follows:

- (A) Non-exclusive easement in the common elements designed for such purposes for ingress to, and egress from, utility services for and support of said apartment; in the other common elements for use according to their respective purposes.
- (B) Exclusive easements to use the limited common elements appurtenant to said apartment designated for its exclusive use by the Declaration.

SECOND: An undivided 1.5597% interest, in all common elements of the Project and in the land, as established for said apartment by the Declaration, or such other percentage interest as hereinafter established for said apartment by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof.

Being the real property conveyed to Kahana Falls Limited Partnership, a Hawaii limited partnership, by Apartment Deed dated January 27, 1992, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 92-13549.

The land on which said condominium is located is more fully described in the Declaration of Condominium Property Regime dated May 2, 1991, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 91-61027, as the same was or may be amended from time to time.



EXHIBIT "A"

FIRST: Apartment No. 609, of that certain condominium project known as "KAHANA FALLS", as shown on Condominium File Plan No. 1494 and described in the Declaration of Condominium Property Regime dated May 2, 1991, recorded May 14, 1991, as Document No. 91-61027, as the same was or may be amended from time to time, in the Bureau of Conveyances, State of Hawaii.

TOGETHER WITH appurtenant easements as follows:

- (A) Non-exclusive easement in the common elements designed for such purposes for ingress to, and egress from, utility services for and support of said apartment; in the other common elements for use according to their respective purposes.
- (B) Exclusive easements to use the limited common elements appurtenant to said apartment designated for its exclusive use by the Declaration.

SECOND: An undivided 1.5597% interest, in all common elements of the Project and in the land, as established for said apartment by the Declaration, or such other percentage interest as hereinafter established for said apartment by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof.

Being the real property conveyed to Kahana Falls Limited Partnership, a Hawaii limited partnership, by Apartment Deed dated January 27, 1992, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 92-13550.

The land on which said condominium is located is more fully described in the Declaration of Condominium Property Regime dated May 2, 1991, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 91-61027, as the same was or may be amended from time to time.

SUBJECT, HOWEVER, to the following:

1. Title to all minerals and metallic mines reserved to the State of Hawaii.

2. Right-of-Way reserved by H. A. Baldwin, W. D. Baldwin, F. F. Baldwin, J. P. Cooke and S. A. Baldwin, as Trustees under the Will and of H. P. Baldwin, Deceased, as contained in that certain Deed dated December 31, 1914, recorded in the Bureau of Conveyances, State of Hawaii, in Book 410, Pages 177 and 179, containing a total area of 2 acres, more or less.

3. Grant in favor of Meyer M. Ueoka, husband of Yukie H. Ueoka, dated May 25, 1978, recorded in said Bureau, in Book 12945, Page 23, for the purpose of an easement for utility purposes over, under, across and through a portion of the land herein described.

4. Unrecorded Right-of-Entry Agreement as contained in that certain Deed dated January 20, 1978, recorded in said Bureau, in Book 13023, Page 325, in favor of the State of Hawaii.

5. Agreement of Indemnity dated September 5, 1979, recorded in said Bureau, in Book 14037, Page 307, made by and between Realty Concepts, Inc., and Harvard Developments, Ltd., as "Indemnitor", and The County of Maui, through its Department of Water Supply, a political subdivision of the State of Hawaii, as "Indemnitee".

6. Subdivision Agreement (Three Lots or Less) dated September 19, 1979, recorded in said Bureau, in Book 14037, Page 464, made by and between Myron A. Resnick, single, Insurance Concepts, Inc., a Hawaii corporation, and Glenn Orr Hay, Jr., husband of Carol Ann Hay, "Owner", and The County of Maui, a body politic and corporate and a political subdivision of the State of Hawaii.

7. Subdivision Agreement (Large Lots) dated May 4, 1979, recorded in said Bureau, in Book 14037, Page 470, made by and between Myron A. Resnick, single, Insurance Concepts, Inc., a Hawaii corporation, and Glenn Orr Hay, Jr., husband of Carol Ann Hay, "Owner", and County of Maui, a body politic and corporate and a political subdivision of the State of Hawaii.

8. Grant in favor of Maui Electric Company, Limited, and Hawaiian Telephone Company, dated December 3, 1980, recorded in said Bureau, in Book 15357, Page 166, for a perpetual non-exclusive right and easement to build, construct, etc., underground power lines, etc., over, across, through and under portions of the land

described herein. Said easement designated as Easement "A-1" (15 feet wide) for utility purposes, containing an area of 3,073 square feet, more or less.

9. Grant in favor of Maui Electric Company, Limited, and Hawaiian Telephone Company, dated March 26, 1981, recorded in said Bureau, in Book 15477, Page 756, for a perpetual non-exclusive right and easement to build, construct, etc., underground power lines, etc., over, across, through and under portions of the land described herein. Said easement designated as Easement "A-1" (15 feet wide) for utility purposes, containing an area of 3,073 square feet, more or less.

10. Grant in favor of Maui Electric Company, Limited dated May 1, 1981, recorded in said Bureau, in Book 15571, Page 632, for the purpose of a perpetual non-exclusive right and easement to build, construct, etc. pole and wire lines and underground power lines, etc., over, across, through and under the land described herein.

11. Grant in favor of County of Maui, a political subdivision of the State of Hawaii, dated December 22, 1981, recorded in said Bureau, in Book 17227, Page 543, for the purpose of a non-exclusive easement to construct, reconstruct, etc., a water pipeline or pipelines, etc. over, across, through and under Easement "A-1", area 3,073 square feet (15 feet wide) for utility purposes.

12. Subdivision Agreement (Large Lots) dated March 9, 1984, recorded in said Bureau, in Book 17740, Page 344, by and between Harvard Properties, Inc., a Delaware corporation, ("Owner"), and the County of Maui.

13. Subdivision Agreement (Three Lots or Less) dated March 9, 1984, recorded in said Bureau, in Book 17740, Page 353, by and between Harvard Properties, Inc., a Delaware corporation, ("Owner"), and the County of Maui.

14. Matters as shown on Condominium File No. 1494, filed in the Bureau of Conveyances, State of Hawaii.

15. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions set forth in the Declaration of Condominium Property Regime, dated May 2, 1991, recorded in said Bureau, as Document No. 91-61027.

16. By-Laws of the Association of Apartment Owners of Kahana Falls, dated May 2, 1991, filed in said Office, as Document No. 91-61028.

described herein. Said easement designated as Easement "A-1" (15 feet wide) for utility purposes, containing an area of 3,073 square feet, more or less.

9. Grant in favor of Maui Electric Company, Limited, and Hawaiian Telephone Company, dated March 26, 1981, recorded in said Bureau, in Book 15477, Page 756, for a perpetual non-exclusive right and easement to build, construct, etc., underground power lines, etc., over, across, through and under portions of the land described herein. Said easement designated as Easement "A-1" (15 feet wide) for utility purposes, containing an area of 3,073 square feet, more or less.

10. Grant in favor of Maui Electric Company, Limited dated May 1, 1981, recorded in said Bureau, in Book 15571, Page 632, for the purpose of a perpetual non-exclusive right and easement to build, construct, etc. pole and wire lines and underground power lines, etc., over, across, through and under the land described herein.

11. Grant in favor of County of Maui, a political subdivision of the State of Hawaii, dated December 22, 1981, recorded in said Bureau, in Book 17227, Page 543, for the purpose of a non-exclusive easement to construct, reconstruct, etc., a water pipeline or pipelines, etc. over, across, through and under Easement "A-1", area 3,073 square feet (15 feet wide) for utility purposes.

12. Subdivision Agreement (Large Lots) dated March 9, 1984, recorded in said Bureau, in Book 17740, Page 344, by and between Harvard Properties, Inc., a Delaware corporation, ("Owner"), and the County of Maui.

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14. Matters as shown on Condominium File No. 1494, filed in the Bureau of Conveyances, State of Hawaii.

15. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions set forth in the Declaration of Condominium Property Regime, dated May 2, 1991, recorded in said Bureau, as Document No. 91-61027.

16. By-Laws of the Association of Apartment Owners of Kahana Falls, dated May 2, 1991, filed in said Office, as Document No. 91-61028.

EXHIBIT "B"

1. One Bedroom Type 1 Apartments (Group 1):  
202 (EOY)
2. One Bedroom Type 1 Apartments (Group 2):  
402 (EOY)
3. Two Bedroom Type 2 Apartments (Group 3):  
105 (EOY)
4. Two Bedroom Type 2 Apartments (Group 4):  
309 (EOY)
5. Two Bedroom Type 2 Apartments (Group 5):  
607 (EOY), 609 (EOY)

(EOY) - This means the unit is in the Every Other Year Program.