

CM 1494 -

A000

I hereby certify that this is a true copy from the records of the Bureau of Conveyances.

*S. Furukawa*  
Registrar of Conveyances  
Assistant Registrar, Land Court  
State of Hawaii

91-061027 -

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDS

01 MAY 14 AM 8 01

S. FURUKAWA, REGISTRAR

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup ( ) To:

S.C.I. ENTERPRISES  
P.O. Box 93118-1  
LAS VEGAS, NV.  
89193-3118

H-14,050

DECLARATION OF CONDOMINIUM PROPERTY REGIME  
KAHANA FALLS

KNOW ALL MEN BY THESE PRESENTS:

SUBMISSION OF CONDOMINIUM PROPERTY REGIME. That S. C. I. ENTERPRISES, INC., a Nevada corporation, whose address is P. O. Box 93118-1, Las Vegas, Nevada 89193-3118, hereinafter called "Declarant", does hereby submit the land described hereafter to the provisions of Chapter 514A, Hawaii Revised Statutes, as amended, known as the Condominium Property Act with respect to said land and any existing improvements thereon to be known as the "KAHANA FALLS" condominium project, and in furtherance thereof hereby makes the following declarations as to division, covenant, restrictions, limitations, conditions and uses to which the land and improvements and appurtenances to be constructed and existing thereon may be put, and as a portion thereof may be existing, hereby specifies that said Declaration shall constitute covenants to run with the land and shall be binding on said Declarant, its successors and assigns.

1.0 NAME OF REGIME. The name of this project shall be KAHANA FALLS.

2.0 DESCRIPTION OF PROPERTY. The Property consist of approximately 2.626 acres of land and is located at 4260 Lower Honoapiilani Road, Kahana, Maui, Hawaii, and is more particularly

described in Exhibit "A" attached hereto and incorporated herein by reference.

3.0 DESCRIPTION OF PROJECT. The Project will consist of one two-story building without a basement, one two-story building with a basement, and two six-story buildings without a basement having a total of 60 resort apartments, 10 residential apartments and 6 commercial apartments for a total of 74 apartments, together with 105 open parking stalls and landscaped areas to be constructed in accordance with plans and specifications certified to by Stanley S. Gima of Gima, Yoshimori & Associates, AIA, Inc., Registered Professional Architect, the Condominium Map thereof being recorded with the Bureau of Conveyances, State of Hawaii, as Condominium Map No. 1494 (the "Condominium Map").

3.1 DESCRIPTION OF BUILDINGS. The buildings are constructed principally of wood, concrete and other allied building materials, with a concrete slab foundation and concrete tile roofing. Building A is six floors in height and contains 2 two bedroom apartments and 4 one bedroom apartments per floor. Building B is six floors in height and contains 4 two bedroom apartments per floor. Building C is two floors in height with a basement and it contains the lobby and 4 commercial apartments. Building D is two floors in height and contains 5 one bedroom apartments per floor. The apartments in Buildings A and B have access to the ground level through elevators and Building C has an elevator which services the basement through the second floor. The apartments in Building D have access to the ground level through two stairwells.

4.0 DIVISION OF PROJECT. The Project is hereby divided into 74 separately designated and described freehold estates.

4.1 DESCRIPTION OF APARTMENTS. The apartments in the Project consist of the following types:

A. Two-bedroom Type 2 Apartments. There are 36 separately designated and described freehold estates. Each of the Type 2 two-bedroom apartments consist of 2 bedrooms, 2 bathrooms, a kitchen, living room, dining area, and a lanai. The bedroom which has a separate entrance also has a wet bar. The net living area of the two bedroom type apartment is 957 square feet; and the lanai is 109 square feet. The last two digits of this type of apartment is from "05" through "10", inclusive. Apartment 105 is a handicap unit.

B. One-bedroom Type 1 Apartment. There are 24

separately designated and described freehold estates. Each of the one-bedroom Type 1 apartments consist of 1 bedroom, 1 and 1/2 bathroom, a kitchen, living room, dining area, and a lanai. The net living area of a one-bedroom Type 1 apartment is 761 square feet; and the lanai is 56 square feet. The last two digits of this type of apartment is from "01" through "04", inclusive.

C. One-bedroom Type 1 Apartment (Building D). There are 8 separately designated and described freehold estates. Each of the one-bedroom Type 1 in Building D apartments consist of 1 bedroom, 1 bathroom, a kitchen, and a living/dining room. The net living area of a one-bedroom Type 1 apartment in Building D is 417 square feet.

D. One-bedroom Type 2 Apartment (Building D). There are 2 separately designated and described freehold estates. Each of the one-bedroom Type 2 apartments in Building D consist of 1 bedroom with a walk-in closet, 1 bathroom, a kitchen, and a living/dining room. The net living area of a one-bedroom Type 2 apartment in Building D is 473 square feet.

E. Apartment C-3. This is a separately designated and described freehold estate. Apartment C-3 consist of one office type room located on the first floor of Building C. The net area of this apartment is 90 square feet.

F. Apartment C-4. This is a separately designated and described freehold estate. Apartment C-3 consist of one office type room located on the first floor of Building C. The net area of this apartment is 90 square feet.

G. Apartment C-5. This is a separately designated and described freehold estate. Apartment C-5 consist of one retail or sales office type room, excluding the staircase located on the first floor of Building C. The net area of this apartment is 845 square feet.

H. Apartment C-6. This is a separately designated and described freehold estate. Apartment C-6 consist of the entire second floor of Building C excluding the elevator, elevator shaft, and two stairwells which are common elements of the Project. This unit includes the dining area, restrooms, audio/visual room, conference room, office, sales manager's office, lunchroom, and lobby area located on the second level of Building C. The net area of this apartment including the two stairwells and elevator shaft is 3335 square feet.

I. The floor area of an apartment is the net living area (or net area as described above) and is measured from the interior surface of the apartment's perimeter walls excluding in the case of the apartments on the first level in Building C, any portions of the Building that are common elements.

4.3 LOCATION OF APARTMENTS. The first digit of an apartment for the apartments in Buildings A and B, indicates the floor that the apartment is located on and are numbered as identified in the Condominium Map. The last two digits of the apartment numbers for the apartments in Building A are from "01" through "06", inclusive. The last two digits of the apartment numbers in Building B are from "07" through "10", inclusive. Apartments C-3, C-4 and C-5 are located on the first level of Building C. Apartment C-6 is located on the second level of Building C. The apartments in Building D are numbered consecutively from 1 to 10. Apartments 1 through 5 are on the first floor and Apartments 6 through 10 are on the second floor. The location of each apartment and the Building are as shown on the Condominium Map. Each apartment has access to a walkway, hallway and/or a lobby area which leads to an elevator or stairways to the ground level.

4.4 LIMITS OF APARTMENTS. The respective apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls, ceilings, front entry door and entry area, or floors, lanai railings, unfinished surfaces of the lanai floors and walls, stairways, elevators, elevator shafts, or the interior load bearing walls. The floors, walls and ceilings surrounding each of them or any pipes, wires, conduits or other utility lines running through them which are utilized for or serve more than one unit are deemed common elements as herein provided. Each apartment shall be deemed to include all the walls and partitions, which are not load bearing within its perimeter walls including paint, wallpaper, or the like, carpeting, floor covering and built-in fixtures. Additionally, the boundary lines of each apartment are the exterior unfinished surfaces of doors, windows, and glass walls and/or windows and the frames thereof and the interior of the handrail of the lanai.

4.5 COMMON ELEMENTS. The common elements include:

- a. The land in fee simple.
- b. The foundations, floor slabs, columns, girders, beams, supports, bearing walls, roofs, entry landings, elevators,

storage rooms, utility rooms, and stairways in the buildings not within any of the apartments.

c. The yards, landscaping, trash area, including the open parking stalls which are not appurtenant or assigned to an apartment, and all of the landscaped yards and lawns.

d. The central and appurtenant installations for utility services used or necessary to the existence, maintenance and safety of the Project.

e. All licenses, leases, or contractual arrangements that the Association enters into for the purpose of providing parking, recreational amenities, including but not limited to swimming pool and other facilities for the use or benefit of the apartment owners, their invitees, tenants and/or guest.

f. Those portions of Building C not designated as an apartment unit which includes the stairwells, elevator, elevator shaft, lobby area, activities desk, manager office, reception area, located on the first level and machine room, exercise room, maintenance rooms, and restrooms in the basement of Building C.

#### 4.6 LIMITED COMMON ELEMENTS.

Parking. Notwithstanding any other covenant or term contained herein, each apartment in Building C and D in the Project shall have appurtenant thereto the use of at least 1 parking stall and such parking stall shall be deemed a limited common element of said apartment. The location of the parking stalls are set forth in the Condominium Map. The parking stall assigned to each apartment in Building C and D are identified in Exhibit "B" attached hereto. The Association of Apartment Owners through its Board of Directors, shall establish rules and regulations for the use of all the unassigned stalls; provided that such rules shall provide for the use of at least one parking stall per apartment in Buildings A and B. The 91 unassigned parking stalls consists of 56 tandem stalls, 4 loading stalls, 1 handicap stall and 30 regular stalls.

Apartment C-4. There is an easement for telephone purposes in favor of Apartment C-4. The easement is a limited common element of and is appurtenant to Apartment C-4; subject, however, to the right of the owner of Apartment C-4 to abandon and relinquish its easement rights to the Association.

5.0 COMMON INTEREST. Each apartment shall have appurtenant thereto the following undivided interest in all the common elements of the Project for determination of the common profits, expenses, voting and for all other purposes:

<u>Apartment Type</u>	<u>No.</u>	<u>Per Unit %</u>	<u>Total</u>
2 Bedroom, Type 2	36	1.5597%	56.1492%
1 Bedroom, Type 1	24	1.2403%	29.7672%
1 Bedroom, Type 1 (Building C)	8	0.6796%	5.4368%
1 Bedroom, Type 2 (Building C)	2	0.7709%	1.5418%
Apartment C-3	1	0.1467%	0.1467%
Apartment C-4	1	0.1467%	0.1467%
Apartment C-5	1	1.3772%	1.3772%
Apartment C-6	1	5.4344%	5.4344%
			100.00%

The percentage undivided interest is calculated by dividing an apartment's net living area or net area (excluding the lanai) by the sum of all the net living areas or net areas of all the apartments with minor adjustments to bring the total percentage to 100%.

6.0 EASEMENTS. Each apartment shall have and be subject to and have appurtenant thereto the following:

a. Non-exclusive easements in the common elements designated for such purposes as ingress to, egress from, utility services for, and support and maintenance and repair of each apartment and in the other common elements for use according to their respective purposes. If any part of the common elements encroaches upon any apartment or limited common element, a valid easement for such encroachment and the maintenance thereof so long as it continues shall and does exist. In the event any portion of any building shall be partially or totally destroyed and then rebuilt, minor encroachments of any parts of the common elements due to such construction and maintenance thereof shall exist. The

Association shall have the right to be exercised by its Board of Directors or the managing agent to enter into each apartment from time to time during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs therein necessary to prevent damage to any apartment or common element.

b. The Declarant shall have the right to use in its sole discretion from time to time any apartments that it owns as models, management, promotional, marketing, advertising and/or sales offices and conduct time sharing programs, sales and rental operations within the Project and to maintain such advertising signs which it deems necessary to conduct its business so long as the signs comply with any governmental ordinance, which may be placed in any location of the project.

c. The apartments in Building C shall all have non-exclusive easements for ingress to and egress from the respective apartments over, across and through the stairwells, stairways, and elevators.

d. Apartment C-4 shall have an easement within the electrical/telephone room located on the first level of Building C for the purposes of installing, maintaining and operating a telephone system for the Project or any portion thereof; provided that the exercise and use of the easement shall not unreasonably interfere with the Association's use, maintenance and operation of the electrical room for electrical purposes. The Declarant or any subsequent owner of Apartment C-4, has the right at any time within 10 years from the recording of this Declaration, to release, abandon and relinquish the easement for telephone purposes, provided that such easement rights are then granted or conveyed to the Association. Such grant shall be effective upon the recording of a quitclaim conveyance or similar document of such easement rights to the Association.

7.0 ALTERATION AND TRANSFER OF INTERESTS. Except as herein specified, the common interest and easements appurtenant to each apartment shall have a permanent character and shall not be altered without the consent of all of the apartment owners affected, expressed in an amendment to this Declaration and duly filed. The common interest and easements shall not be separated from the apartment to which they appertain and shall be deemed to be conveyed, leased or encumbered with such apartment even though such interest or easements are not expressly mentioned or described in the conveyance or other instrument. The owners of apartments in Building A, B and D may if permitted by the applicable building

codes and/or zoning ordinances alter the interior of an apartment provided that such alteration is solely within the interior of an apartment; does not affect or change any load bearing walls; affect or diminish the structural integrity of the building or apartment; does not change the number of rooms within the apartment; does not affect any common element; and does not affect or alter any lanai of any apartment. The owners of apartments in Building C may if permitted by the applicable building codes and/or zoning ordinances, alter, renovate or reconfigure the interior of any such apartment provided such alteration does not affect or diminish the structural integrity of the building or apartment and does not affect any common element. Prior to commencing any permitted alterations, the owner shall obtain all necessary permits to undertake and accomplish such construction.

8.0 USE. The apartments shall be occupied and used as an apartment, resort, commercial or time sharing use for any time period or periods including any annual recurring period on a fixed or floating basis by the respective owners thereof, their tenants, families, domestic servants and social guests, subject to such limitation as may be contained herein, the Bylaws and the House Rules which may be adopted from time to time governing the use of the apartments; provided that unless otherwise permitted by the County of Maui, all of the apartments in Building A and B shall be used exclusively for short term use. For the purpose of this paragraph 8.0, the phrase "short term use" shall be deemed to be the right to use or occupy an apartment in Buildings A or B for less than 15 consecutive days. The parking stalls are intended and shall be used primarily for parking purposes subject to such limitations as may be contained herein or the Bylaws and House Rules which may be adopted from time to time governing the use of the Project. Notwithstanding the foregoing, the Declarant shall have the right to use in its sole discretion from time to time any apartments that it owns as models, management, promotional, marketing, advertising and/or sales offices and conduct time sharing programs, sales and rental operations within the Project and to maintain such advertising signs which it deems necessary to conduct its business so long as the signs comply with any governmental ordinance which may be placed in any location of the project.

9.0 ASSOCIATION OF APARTMENT OWNERS. Administration of the Project shall be vested in its Association consisting of all owners of apartments in the Project in accordance with the Bylaws of the Association filed concurrently with this Declaration. The owners of any apartment upon acquiring title thereto shall automatically



become a member of the Association and shall remain a member thereof until such time as its ownership ceases for any reason at which time his membership in the Association shall automatically cease. Operation and use of the Project and maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto shall be in accordance with the provisions of the Condominium Property Act, this Declaration and the Bylaws.

**10.0 MANAGING AGENT AND SERVICE OF PROCESS.** Operation of the Project shall be conducted for the Association by a managing agent which shall be appointed by the Association in accordance with the Bylaws. The initial managing agent shall be Owner's Management Corporation, a Hawaii corporation, whose principal place of business is at 3970 Wyllie Road, Princeville, Kauai, Hawaii 96722, and whose post office address is P. O. Box 3099, Princeville, Hawaii 96722, and, who is hereby authorized to receive service of legal process in all cases provided in said Condominium Property Act until the successor is appointed by the Board of Directors in which event such successor or any member of the Board of Directors, residing in the County of Maui, State of Hawaii, may be served with such process of service.

**11.0 COMMON EXPENSES.** All charges, costs and expenses whatsoever incurred for or in connection with the administration of the Project, including without limitation the operation thereof, any maintenance, repair, replacement and restoration of the common elements and limited common elements and any additions and alterations thereto, any labor, services, materials, supplies and equipment therefore, any liability whatsoever for loss or damage arising out of or in connection with the common elements and limited common elements of any accident, fire or nuisance thereon, and any premiums for hazard and liability insurance herein required with respect to the Project shall constitute common expenses for each apartment. The Board of Directors of the Association shall have the authority to assess the common expenses against the apartments and the unpaid amounts of such assessments against any such apartment may be foreclosed by the Board of Directors, or the Managing Agent as provided by the Act, provided that 30 days' prior written notice of intention to foreclose shall be mailed, postage prepaid, to the Apartment Owner and all other persons having any interest in such apartment as shown in the Association's record of ownership. Said lien shall constitute a lien prior to all other liens except only (1) liens for taxes and assessments lawfully imposed by governmental authority against such apartment, and (2) all sums unpaid on mortgages of record, and costs and expenses

including attorney's fees provided in such mortgages. The Board or the Managing Agent acting on behalf of the Apartment owners shall have the power to bid on such apartment at a foreclosure sale and to acquire, hold, lease, mortgage and convey such apartment. A suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. Where the mortgagee of a mortgage of record or other purchaser of a apartment obtains title to the apartment as the result of foreclosure of such mortgage, the acquirer of title, its successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such apartment which became due prior to the acquisition of title to such apartment by such acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from the owners of all of the apartments, including the acquirer, its successors and assigns.

Utility services, such as electricity, if separately metered to apartments, shall be payable by apartment owners having such meters, and such charges payable by apartment owners shall not be considered to be common expenses.

12.0 COMPLIANCE WITH DECLARATION AND BYLAWS. All apartment owners, their tenants, agents, families, employees, and guests and any other persons who may in any manner use the project, shall be bound by and comply strictly with the provisions of this Declaration, the Bylaws of the Association and all agreements, decisions and determinations of the Association duly and lawfully made or amended from time to time, and failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board or Managing Agent on behalf of the Association or, in a proper case, by any aggrieved apartment owner.

13.0 INSURANCE. The Association on behalf of each owner as its common expenses shall at all times keep the buildings and improvements including any exterior glass which may be insured at the option of the Association insured against loss or damage by fire and flood with extended coverage including demolition and debris removal and war risk insurance when available with an insurance company authorized to do business in Hawaii having a financial rating in Best's Insurance Reports of Class VI or better, in an amount as near as practicable to the full replacement cost therefore without deduction for depreciation, in the name of the Association as trustee for all apartment owners and apartment mortgagees in proportion to the loss or damage to their respective

apartments and appurtenant common interests and easement interests and payable in case of loss to such bank or trust company authorized to do business in Hawaii as the Association shall designate for the custody and disposition as herein provided of all proceeds of such insurance, hereinafter referred to as "Trustee," without prejudice to the right of each apartment owner to insure his apartment for his own benefit. In every case of such loss or damage all insurance proceeds shall be used with all reasonable speed by the Association for rebuilding, repairing or otherwise reinstating the building in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws herein provided, and the Association at its common expense shall make up any deficiency in such insurance proceeds. Every such policy of insurance shall:

(a) Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration of contribution by reason of, any other insurance obtained by or for any apartment owner;

(b) Contain no provision relieving the insurer from liability for loss occurring while the hazard to such building is increased, whether or not within the knowledge or control of the Association, or because of any breach of warranty or condition or any other act or neglect by the Association or any apartment owner or any other persons under either of them;

(c) Provide that such policy may not be cancelled (whether or not requested by the Association) except by the insurer giving at least 30 days' prior written notice thereof to the Association and every other person in interest who shall have requested such notice of the insurer;

(d) Contain a waiver by the insurer of any right of subrogation to any right of the Association or any unit owners against any of them or any other persons under them; and

(e) Contain a standard mortgagee clause which shall:

(1) Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages on any apartment or apartment lease or sublease in the Project, in their respective order and preference, whether or not amended therein;

(2) Provide that such insurance as to the interest

of any mortgagee shall not be invalidated by any act or neglect of the Association or apartment owners or any persons under any of them;

(3) Waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause; and

(4) Provide that, without affecting any provision afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by the Association.

The Association on behalf of each owner as its common expenses shall also effect and maintain at all times comprehensive general liability insurance, covering all apartment owners, the Association, the Board, its officers and its employees with respect to the Project, in an insurance company authorized to do business in Hawaii having a financial rating in Best's Insurance Reports of Class VI or better, with minimum limits of not less than \$500,000 for injury to one person and \$1,000,000 for injury to more than one person in any one accident or occurrence and \$50,000 for property damage, without prejudice to the right of any apartment owners to maintain additional liability insurance for their respective apartments.

Not less frequently than every three (3) years, and whenever requested by more than twenty percent (20%) of the owners of apartments in the Project, the Association shall review the adequacy of its casualty and liability insurance program and shall prepare in writing the conclusions of the Association and the action it has taken or proposes to take with respect thereto, to the owner of each apartment, and to the holder of any mortgage on any apartment who shall have requested a copy of such report. If it shall appear at any time that the replacement value of the building is above or below the replacement coverage of the policy or that the liability is above or below that customarily carried for similar projects, then the Board shall promptly cause such limits to be adjusted accordingly.

If the building is damaged by fire or other casualty which is insured against, and said damage is limited to a single apartment, the insurance proceeds shall be used by the Association or the Trustee for payment of the contractor retained by the Association to rebuild or repair such apartment in accordance with the original

plans and specifications therefore. If the insurance proceeds are insufficient to pay all costs of repair, the deficiency shall be paid from the maintenance fund. If the maintenance fund is insufficient for this purpose, the Association shall levy a special assessment on all the owners of apartments in proportion to their respective common interests. If such damage extends to two or more apartments or extends to any part of the limited common elements, if any, or to the common elements:

(a) If the Association does not within ninety (90) days after such casualty decide to not rebuild the building, the Association shall be deemed to have agreed to rebuild the building and shall thereupon contract to repair or rebuild the damaged portions of the building, including all apartments so damaged; as well as the common elements and limited common elements, in accordance with plans and specifications therefore, which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Association and the mortgagee of record of any interest in an apartment directly affected thereby, provided that in the event said modified plan eliminates any apartment and such apartment is not reconstructed the Trustee shall pay to the owner of said apartment the portion of said insurance proceeds allocable to said apartment (less the proportionate share of said unit in the cost of debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds. The insurance proceeds shall be paid by the Trustee to the contractor employed for such work, in accordance with the terms of the contract for such construction in accordance with the terms herein set forth. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding all damaged apartments, limited common elements and common elements, the Association is expressly authorized to pay such costs in excess of the insurance proceeds from the maintenance fund, and if the maintenance fund is insufficient for this purpose, the Association shall levy a special assessment on all the owners of apartments in proportion to their respective common interests.

(b) The cost of the work shall be paid out from time to time or at the direction of the Board as the work progresses; but subject to the following conditions:

(1) The work shall be in charge of an architect or engineer;

(2) Each request for payment shall be made on seven (7) days' prior written notice to the Trustee and shall be accompanied by a certified statement made by such architect or engineer stating that all of the work completed has been done in compliance with the approved plans and specifications and that the sum requested is justly due to the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services and materials), and that when added to all sums previously paid out by the Trustee the sum required does not exceed the value of the work done to the date of such certificate;

(3) Each request shall be accompanied by waivers of liens satisfactory to the Trustee, covering that part of the work for which payment or reimbursement is being requested and by a bond or a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Trustee, that there has not been filed with respect to the premises any mechanics' or other lien or instrument for the retention of title in respect of any part of the work not discharged of record;

(4) The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the premises legal;

(5) The fees and expenses of the Trustee as determined by the Association and the Trustee shall be paid by the Association as common expenses;

(6) Such other conditions not inconsistent with the foregoing as the Trustee may reasonably request.

(c) Upon completion of the work and payment in full therefore, any remaining proceeds of insurance then or thereafter

in the hands of the Association or the Trustee shall be paid or credited to the owners of the apartments (or to the mortgagee of an apartment if there be a mortgage) in proportion to their respective common interests.

(d) To the extent that any loss, damage, or destruction to the buildings or other real property is covered by insurance procured by the Association, the association shall have no claim or cause of action for such loss, damage or destruction against any apartment owner or lessee. All policies of insurance referred to in this Paragraph (d) shall contain appropriate waivers of subrogation.

In the event all apartment owners in the Project shall agree in writing consented to by all mortgagees of their respective interests, if required, that the building need not be rebuilt, the insurance proceeds shall be used to remove any remaining improvements on the land included in the Project, and the balance, if any, shall be allocated to the apartment owners and their mortgagees in accordance with the interest in the common elements appurtenant to each apartment.

Any insurance policy providing the coverage required hereby shall contain a provision requiring the insurance carrier at the inception of the policy and on each anniversary date thereof to provide the Association with a written summary in layman's terms of the policy. The summary shall include the type of policy, description of the coverage and the limits thereof, amount of annual premium and renewal dates. The Association shall provide this information to an apartment owner and any mortgagee of an apartment, or an apartment lessee demising the same upon request.

14.0 CONDEMNATION. In the event of a taking in condemnation or by eminent domain of a part or all of the common elements of the Project, all compensation shall be payable to such bank or trust company authorized to do business in Hawaii as designated by the Board doing business in Hawaii having net assets of not less than Five Million Dollars (\$5,000,000.00). The Board shall arrange for the repair and restoration of the building and improvements in accordance with the design thereof immediately prior to such condemnation or, if such repair and restoration laws then in force shall not permit such construction, then in accordance with such modified plan as shall be previously approved by the Board and the mortgagee of record of any interest in an apartment directly affected thereby. In the event of a partial taking in which an apartment is eliminated or not restored or any undeveloped

Increment (or portion thereof) is eliminated, the condemnation trustee shall disburse the portion of the proceeds of such award allocable to said apartment, less the proportionate share of said apartment for the cost of debris removal, to the owner of said apartment or the Declarant, as the case may be, in satisfaction of his interest in said apartment. The condemnation trustee shall disburse the remainder of the proceeds of such award to the contractor engaged in such repair and restoration in appropriate progress payments and in the event such proceeds are insufficient to pay the costs from the maintenance fund and if the maintenance fund is insufficient for this purpose the Board shall levy a special assessment on the owners of apartments in proportion to their common interests. In the event sums are received in excess of the cost of repairing and restoring the remaining building and improvements, or in the event all of the building and improvements are so taken or condemned, such amount as shall exceed proceeds of said proceeds, as the case may be, shall be divided between the owners of apartments in accordance with their interests in the common elements.

15.0 UNINSURED CASUALTY. In case at any time or times any improvements of the Project shall be substantially damaged or destroyed by any casualty not herein required to be insured against, whether to rebuild, repair or restore such improvements shall be determined by vote of unit owners representing seventy-five percent (75%) of the common interest, that is, the building or improvements shall be rebuilt, repaired or restored unless the unit owners representing at least seventy-five percent (75%) of the common interests for the Project vote not to rebuild, repair or restore and such vote is reflected by an instrument expressing such decision. The cost of any rebuilding, restoring, or repairing the improvements shall be a common expense, provided that in no event shall such cost include any personal property of an apartment owner.

16.0 MAINTENANCE RESERVE FUND. The Board shall establish and maintain a maintenance reserve fund by the assessment of and payment of all the apartment owners in equal monthly installments based on their common interest. The amount of the common expenses allocated, used or to be used for capital improvements, or any other capital expenditures, shall not be deemed income to the Association but shall be credited upon the books of the Association to the paid-in surplus account as a capital contribution by the apartment owner. The interest of each apartment owner in said Fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with such apartment even though not expressly



mentioned or described in the conveyance thereof. In the event the Horizontal Property Regime hereby created shall be terminated, said Fund remaining after full payment of all common expenses of the Association shall be distributed to all apartment owners as their interests may appear except for the interests of owners of any apartments then reconstituted as a Condominium Property Regime.

18.0 AMENDMENT OF DECLARATION. The Declaration may be amended by the vote of owners of seventy-five percent (75%) of the common interest, effective upon the recording of an instrument setting forth such amendment and vote, duly executed by such owners or by the proper officers of the Association; provided, however, that the Declarant reserves the right to amend this Declaration without the consent or joinder of any apartment owner in order to file an amendment pursuant to the provisions of Section 514A-12, Hawaii Revised Statutes, after construction of the buildings described herein, and attaching to such amendment a verified statement of a registered architect or engineer certifying that the Final Plans theretofore filed fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments built. In the case of a modification or amendment to the Bylaws, this Declaration may be amended to set forth such modification or amendment pursuant to such percentage vote as is required by the Bylaws to render the modifications or amendments thereof effective.

19.0 DEFINITIONS. The terms "majority" or "majority of apartment owners" herein mean the owners of the apartments to which are appurtenant more than fifty percent (50%) of the common interests of the Project and any specified percentages of the apartment owners mean the owners of the apartments to which are appurtenant such percentage of the common interests.

The term "owner" herein or any pronoun used in place thereof shall mean and include the masculine, feminine, or the singular or plural number and jointly and severally individuals, firms or corporations and their respective heirs, executors, administrators, successors and assigns, according to the context thereof.

The term "apartment" herein shall mean and include the apartment in the Project. The term "Project" herein shall mean and include all of the land and improvements in the Condominium Property Regime now existing and hereafter added, less any deletions.

20.0 ARBITRATION OF DISPUTES. Any dispute involving an apartment owner, the Association, the Board, or the Managing Agent shall be submitted to arbitration as required by the Act.



EXHIBIT "A"

All of that certain parcel of land (portion of the land described in and covered by Royal Patent Grant Number 1166 to D. Baldwin, J. F. Pogue and S. E. Bishop) situate, lying and being on the northwesterly side of Honoapiilani Highway (F.A.P. No. RF-030-1(5)) and the southeasterly side of Honoapiilani Road at Kahana, Kaanapali, Lahaina, Island and County of Maui, State of Hawaii, being Lot "B" of the "Kahana Nui Subdivision", and thus bounded and described per survey of Warren S. Suzuki, Registered Professional Land Surveyor, described as follows:

Beginning at a pipe at the most westerly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MANINI" being 14,737.00 feet North and 10,260.16 feet West and running by azimuths measured clockwise from True South:

1. 242° 06' 30" 89.95 feet along the southeasterly side of Honoapiilani Road to a pipe;
2. 237° 36' 30" 86.17 feet along same to a pipe;
3. 234° 22' 30" 54.15 feet along same to a pipe;
4. 223° 06' 30" 16.00 feet along same to a pipe;
5. Thence along Lot "C" of Kahana Nui Subdivision on a curve to the right having a radius of 245.00 feet, the chord azimuth and distance being:  
310° 29' 12" 73.72 feet to a pipe;
6. Thence along same on a curve to the right having a radius of 25.00 feet, the chord azimuth and distance being:  
346° 32' 07" 23.01 feet to a pipe;
7. 295° 30' 28.00 feet along same to a pipe;
8. Thence to along same on a curve to the right having a radius of 20.00 feet, the chord azimuth and distance being:  
256° 18' 29.50 feet to a pipe;

9. 25° 30' 19.00 feet along same to a pipe;
10. 288° 15' 38.00 feet along same to a pipe;
11. 205° 30' 15.41 feet along same to a pipe;
12. Thence along same on a curve to the right having a radius of 5.00 feet, the chord azimuth and distance being:
- 248° 07' 30" 6.77 feet to a pipe;
13. 290° 45' 10.88 feet along same to a pipe;
14. Thence along same on a curve to the left having a radius of 3,729.72 feet, the chord azimuth and distance being:
- 199° 31' 43" 30.99 feet to a pipe;
15. 209° 41' 39" 150.07 feet along same to a pipe;
16. Thence along same on a curve to the left having a radius of 3,759.72 feet, the chord azimuth and distance being:
- 196° 37' 07" 55.38 feet to a pipe;
17. 286° 11' 48" 31.16 feet along Lot 1 of Kahana Nui Subdivision to a pipe;
18. Thence along Honoapiilani Highway (F.A.P. No. RF-030-1(5)) on a curve to the right having a radius of 4,915.00 feet, the chord azimuth and distance being:
- 21° 11' 12.4" 605.17 feet to a pipe;
19. 115° 06' 30" 27.18 feet along Lot "A" of Kahana Nui Subdivision to a pipe;
20. 205° 06' 30" 5.00 feet along same to a pipe;
21. 115° 06' 30" 20.00 feet along same to a pipe;

- |     |      |     |     |   |
|-----|------|-----|-----|---|
| 22. | 25°  | 06' | 30" | 5.00 feet along same to a pipe;   |
| 23. | 115° | 06' | 30" | 19.00 feet along same to a pipe;  |
| 24. | 205° | 06' | 30" | 36.00 feet along same to a pipe;  |
| 25. | 115° | 06' | 30" | 24.00 feet along same to a pipe;  |
| 26. | 205° | 06' | 30" | 5.00 feet along same to a pipe;   |
| 27. | 115° | 06' | 30" | 24.00 feet along same to a pipe;  |
| 28. | 25°  | 06' | 30" | 30.50 feet along same to a pipe;  |
| 29. | 115° | 06' | 30" | 59.73 feet along same to a pipe;  |
| 30. | 152° | 06' | 30" | 118.83 feet along same to a pipe;   |
| 31. | 62°  | 06' | 30" | 5.50 feet along same to a pipe;   |
| 32. | 152° | 06' | 30" | 153.18 feet along same to the point of<br>beginning and containing an area of<br>2.626 acres. |

Together with Easement 1 (15 feet wide) for drainage purposes, over and across a portion of Lot "A" of Kahana Nui Subdivision and containing an area of 8,008 square feet, more or less.

Being all of the land conveyed by Warranty Deed dated December 12, 1989, to S. C. I. Enterprises, Inc., a Nevada corporation, recorded in the Bureau of Conveyances, State of Hawaii, in Book 24016, Page 678.

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.

KF\LAND.EXA

EXHIBIT "B"

Parking. Only the apartments in Buildings C and D in the Project shall have appurtenant thereto the use of at least 1 parking stall each and such parking stall shall be deemed a limited common element of said apartment. The location of the parking stalls are set forth in the Condominium Map. The parking stall assigned to each apartment in Buildings C and D are as follows:

<u>UNIT</u>	<u>STALL NO.</u>
1	20
2	22
3	24
4	26
5	28
6	21
7	23
8	25
9	27
10	29
C-3	5
C-4	6
C-5	4
C-6	7