

# Shared Ownership at the Sands of Kahana

## Escrow Agreement

By this contract, Old Republic Title and Escrow of Hawaii, Inc., a Hawaii corporation (the "escrow agent") agrees with Fractional Ownership, Inc. (the "seller") to provide escrow services to the seller and the buyers of "fractional shares" in the Shared Ownership at the Sands of Kahana fractional ownership program. This escrow agreement is part of each Sands of Kahana Purchase Agreement (the "sales contract"), so that, in addition to the seller and the escrow agent, each buyer is bound by it. Words defined in this escrow agreement mean the same thing in the sales contract, and vice versa.

### Part 1. DEFINITIONS

1.1 "**APARTMENT**" means (i) an apartment in the condominium; (ii) its undivided interest in the common elements of the condominium (except the land); and (iii) its lease of an undivided interest in the land on which the condominium is located.

1.2 "**APARTMENT LEASE**" means the document used to transfer ownership of the individual whole apartments. It actually consists of (i) a deed of the apartment and an undivided interest in the common elements (except the land) and (ii) a lease of an undivided interest in the land on which the condominium is located.

1.3 "**ASSOCIATION**" means the Sands of Kahana Fractional Owners Association, a Hawaii non-profit corporation.

1.4 "**BLANKET LIEN**" means a mortgage or similar lien on more than one fractional share. Generally, a "lien" is a claim against property as collateral for the payment of money. The apartment deed and sublease is not a blanket lien.

1.5 "**BUYER**" means each person shown as a buyer in a sales contract.

1.6 "**BUYER'S UNIT**" means the apartment listed in the buyer's sales contract as "*your unit*."

1.7 "**BUYER'S FUNDS**" means all funds received before closing from or on behalf of any buyer in connection with a sales contract.

1.8 "**CLOSE**" and "**CLOSING**" refer to completing the sale of a fractional share to a buyer and recording a Warranty Deed and Assignment of Sublease and any mortgage signed by the buyer in connection with the sale.

1.9 "**CLOSING COSTS**" means all costs and expenses of closing a sale. It includes, for example: (i) the escrow agent's fees, (ii) conveyance taxes, (iii) notary fees, (iv) recording

costs, (v) charges for credit reports on the buyer obtained by the seller, (vi) costs of drafting the buyer's Warranty Deed and Assignment of Sublease and any loan or financing documents, (vii) costs of title insurance, (viii) all loan fees and costs, and (ix) postage and handling fees.

1.10 "**CLOSING DATE**" means the date when a sale is supposed to close (according to the buyer's contract). The closing actually may occur later, but the closing date is the day when the closing is scheduled to occur.

1.11 "**COMMON ELEMENTS**" means commonly owned property of the condominium (as described in the condominium law and the condominium documents). Generally, all parts of the condominium except the apartments are common elements. Some common elements, called "*limited common elements*" may be used only by the owners of certain apartments.

1.12 "**CONDOMINIUM**" means the Sands of Kahana condominium.

1.13 "**CONDOMINIUM ASSOCIATION**" means the Association of Apartment Owners of the Sands of Kahana condominium. It is an association of all of the owners of apartments in the condominium project acting as a group in accordance with the condominium declaration and bylaws. The condominium association manages the condominium.

1.14 "**CONDOMINIUM DOCUMENTS**" means the condominium declaration, the condominium bylaws, the condominium map, and the condominium rules.

A. "**CONDOMINIUM DECLARATION**" means the "Declaration of Horizontal Property Regime Under Chapter 514A, Hawaii Revised Statutes, The Sands of Kahana" and any changes or additions properly made to it. It established and governs the condominium.

B. "**CONDOMINIUM BYLAWS**" means the "Bylaws of the Association of Apartment Owners of The Sands of Kahana" and any changes properly made to them.

C. "**CONDOMINIUM RULES**" means any rules and regulations adopted by the condominium association from time to time.

D. "**CONDOMINIUM MAP**" means the recorded drawings designated in the condominium declaration as the condominium map and any properly made changes or additions to them. The condominium map shows, among other things, the floor plans of the condominium apartments.

1.15 "**CONTRACT DOCUMENTS**" means, for each buyer, (i) this escrow agreement, (ii) the buyer's sales contract (iii) the buyer's acknowledgment, and (iv) any written changes to any of those documents if the changes have been signed by the person whose duties are changed.

1.16 "**ESCROW AGENT**" means Old Republic Title and Escrow of Hawaii, Inc. It is a Hawaii corporation. Its address is 10 Hoohei Road, Suite 210, Lahaina, Hawaii 96722.

1.17 "**FRACTIONAL SHARE**" means an every-year fractional share or an every-other-year fractional share.

A. "**EVERY YEAR FRACTIONAL SHARE**" means:

1) An undivided one-sixth (1/6th) interest in an apartment lease of a vacation unit;

2) The exclusive right to use and occupy that vacation unit and the common furnishings in it, and to use its limited common elements, if any, during the owner's vacation period in every use year.

3) During the same use period, the right to use the common elements of the condominium along with the other owners and occupants of apartments; and

4) A membership in the Association.

B. "**EVERY-OTHER-YEAR FRACTIONAL SHARE**" means an even-year fractional share or an odd-year fractional share.

C. "**EVEN-YEAR FRACTIONAL SHARE**" means:

1) An undivided one-twelfth (1/12th) interest in an apartment lease of a vacation unit;

2) The exclusive right to use and occupy that vacation unit and the common furnishings in it, and to use its limited common elements, if any, during the owner's vacation period in every use year which end in an even number (for example, 2000, 2002, and so on).

3) During the same use period, the right to use the common elements of the condominium along with the other owners and occupants of apartments; and

4) A membership in the Association.

D. "**ODD-YEAR FRACTIONAL SHARE**" means:

1) An undivided one-twelfth (1/12th) interest in an apartment lease of a vacation unit;

2) The exclusive right to use and occupy that vacation unit and the common furnishings in it, and to use its limited common elements, if any, during the owner's vacation period in every use year which end in an odd number (for example, 1999, 2001, and so on).

3) During the same use period, the right to use the common elements of the condominium along with the other owners and occupants of apartments; and

4) A membership in the Association.

1.18 "**FUNDS**" means cash.

1.19 "**PERMITTED ENCUMBRANCES**" means the encumbrances listed in Exhibit "A" which is attached to this document.

1.20 "**PROGRAM DOCUMENTS**" means:

- the "**Program Declaration**" which is the Declaration of Covenants, Conditions and Restrictions for Shared Ownership in the Sands of Kahana (which created the fractional ownership program);
- the articles. The articles incorporated the Sands of Kahana Fractional Owners Association as the owners association for the fractional ownership program (the "**Association**");
- the bylaws of the Association;
- the association rules;
- any changes properly made to any of those documents.

1.21 "**RECORD**", "**RECORDING**" and similar terms refer to and mean recording in the Bureau of Conveyances of the State of Hawaii.

1.22 "**SALES CONTRACT**" means a Sands of Kahana Fractional Share Purchase Agreement. A sample sales

contract is attached to this escrow agreement as Exhibit "B." Seller will not change the form of the sales contract without first giving the escrow agent a copy of the new form.

1.23 "**SELLER**" means Fractional Ownership, Inc. It is a Hawaii corporation. Its address is 10 Hoohui Road, Suite 110, Lahaina, Hawaii 96761.

1.24 "**UNDIVIDED INTEREST**" refers to the ownership of property by two or more persons as tenants in common. Each person owns a share in the property, sometimes called an "ownership share". For example, if two people own an apartment, each person would own a one-half ownership share. If four people own it, each would own a one-fourth ownership share, also called a one-fourth undivided interest. Each owner of an every-year fractional share owns a one-sixth (1/6th) undivided interest in the vacation unit as tenants in common with the other owners of fractional shares in that unit. An owner of an every-other-year fractional share owns a one-twelfth (1/12th) undivided interest in a vacation unit as tenants in common with the other owners of fractional shares in that unit.

1.25 "**USE PERIOD**" means one of the sixty-day periods of time listed in the list of use periods attached to the Program Declaration or in any "Declaration of Annexation" adding one or more apartments into the program.

1.26 "**VACATION PERIOD**" means the use period or use periods during which an owner has the right to use his or her vacation unit. The vacation period for each fractional share is stated in the owner's sales contract and Warranty Deed and Assignment of Sublease.

1.27 "**VACATION UNIT**" means an apartment included in the fractional ownership program.

1.28 "**WARRANTY DEED AND ASSIGNMENT OF SUBLEASE**" means a legal document used by the seller to transfer title to the buyer's fractional share(s) to the buyer.

Part 2.

PURPOSE OF THIS ESCROW AGREEMENT

This escrow agreement is intended to protect the buyer, the seller and the escrow agent in closing the sale of fractional shares in the fractional ownership program. This escrow agreement and the other contract documents also are intended:

- to assure that the buyer gets marketable title and to protect the buyer from any blanket liens;
- to protect the seller in case the buyer defaults; and

- to be the escrow instructions of the buyer and the seller for the sale of each fractional share.

Part 3.

RECEIPT OF BUYERS' FUNDS AND CLOSING PAPERS

**3.1 DEPOSIT OF CLOSING DOCUMENTS.** Each time the seller accepts a sales contract, it will send a copy of it to the escrow agent. The escrow agent will also accept and hold any closing statement or settlement statement prepared pursuant to the Real Estate Settlement Procedures Act ("RESPA"), and all other papers from the seller or any lender supplying money to or for the buyer. The escrow agent will handle and deliver those documents as instructed by the person who provided them and these escrow instructions.

**3.2 BUYER'S FUNDS.** The seller will send each buyer's funds to the escrow agent promptly after receiving them.

**3.3 DEPOSIT OF FUNDS.** The escrow agent will deposit all funds it receives under this escrow agreement in one or more special bank accounts. The accounts must pay interest at the prevailing interest rate and be at a bank or savings and loan association approved by the seller and located in Hawaii. These accounts must be insured as to principal by the United States government or one of its agencies. Each sales contract states who gets any interest earned on those deposits.

**3.4 REPORTS TO THE SELLER.** Each week the escrow agent will give the seller a written report of all receipts, interest-bearing deposits and disbursements under this escrow agreement and all sales contracts. If the seller requests reports more often, the escrow agent will provide them in return for a reasonable service charge, not exceeding Fifty And No/100 Dollars (\$50.00), for each extra report the seller requests.

Part 4.

RELEASE OF BUYER'S FUNDS WITHOUT A CLOSING

**4.1 RELEASE OF BUYERS' FUNDS.** A buyer's funds may be released from escrow without a closing only as follows:

- A. If a buyer or the seller properly terminates a sales contract pursuant to its terms, all of the buyer's funds will be delivered in accordance with that buyer's sales contract.
- B. If the buyer defaults in the performance of his or her obligations under the sales contract all of the buyer's funds will be delivered in accordance with that buyer's sales contract.
- C. If the seller instructs the escrow agent to do so,

the escrow agent will return to the buyer all of the buyer's funds.

D. Unclaimed funds will be handled as provided in section 4.3.

E. If there is a dispute or conflicting claims or demands, the escrow agent may interplead as provided in section 6.3.

**4.2 RETURN OF DOCUMENT.** If any sale is canceled by the buyer or the seller, the escrow agent will:

- Mark "canceled" on and return to the seller the Warranty Deed and Assignment of Sublease and the sales contract; and
- Return all other papers to the person who gave them to the escrow agent.

**4.3 UNCLAIMED REFUNDS.** Unless the law requires something else, the escrow agent must send written notice by certified or registered mail to each buyer entitled to a refund. If a buyer doesn't claim his refund within one hundred and twenty (120) days after the notice is mailed, then the escrow agent must treat the money as the seller's and not the buyer's funds. By sending the buyer written notice of payment of that money to the seller, the escrow agent is released from any further liability to the buyer for that money.

**4.4 RELEASE OF THE SELLER'S FUNDS.** Any unclaimed refunds and any other funds held by the escrow agent and which the escrow agent may release to the seller under this Part 4 will be paid out as the seller directs in writing. Limits on the release of buyer's funds do not apply to the release of seller's funds by the escrow agent.

## Part 5. PRECLOSING AND CLOSING

**5.1 THE ESCROW AGENT WILL GATHER THE BUYER'S MONEY AND DOCUMENTS.** When the escrow agent receives each sales contract, it will promptly identify and obtain any documents needed to close the sale. Then it will promptly send the buyer any documents which the buyer has yet to sign and will follow up with and urge the buyer to sign and return those documents and to do anything else reasonably required by the seller or any lender.

When the seller informs it of the closing date, the escrow agent will notify each buyer who has not returned all documents and deposited all money required by the sales contract. If any money, documents or other action of the buyer is not delivered to the escrow agent or not done on time,

the escrow agent will tell the seller at once.

**5.2 CLOSING REQUIREMENTS.** The escrow agent will not close any sale before the closing date set according to the sales contract. The escrow agent will close each sale on the closing date if all of the following things have happened (the "*closing conditions*"):

A. The escrow agent has received enough money to pay the Purchase Price stated on the buyer's sales contract less (i) any credits allowed by the seller and (ii) the amount of any mortgage loan obtained by the buyer; and

B. The buyer and seller have done everything required by the sales contract to close the sale; and

C. The escrow agent has received all necessary closing documents; and

D. All requirements set by anyone loaning money to the buyer for the purchase have been met (as determined by whether the lender is prepared to send the money to the escrow agent); and

E. The buyer's unit is included in the fractional ownership program; and

F. The seller has sold all of the fractional shares in the buyer's unit and those sales are ready to close together. This condition is for the benefit of the seller only. The seller can reduce the required number of sales to as low as two fractional shares simply by sending the escrow agent a letter saying so; and

G. As to each existing blanket lien, the escrow agent has received a recordable: (i) release of the buyer's fractional share(s) from the blanket lien, or (ii) non-disturbance agreement signed by every person holding an interest in the blanket lien; and

H. A title insurance company authorized to do business in Hawaii has firmly agreed to issue, after the buyer's Warranty Deed and Assignment of Sublease is recorded, a policy of title insurance on the buyer's fractional share(s) as provided in section 5.4.

If the necessary documents cannot be recorded, or if any requirement listed above has not been met so that the sale cannot be closed on the closing date, the escrow agent will tell the seller at once. The escrow agent also will promptly do everything it can to have the documents corrected and all other requirements satisfied. If a sale does not close on the closing date, the escrow agent will not close it later unless the seller tells it to do so. If the seller does so, the escrow agent will close it on the new date picked by the seller as long as all the

closing conditions have been met.

**5.3 CLOSING.** To close each sale, the escrow agent will:

- Date all documents and fill in any other necessary blanks in them; and
- Record all releases and non-disturbance agreements, the buyer's Warranty Deed and Assignment of Sublease, any mortgage, and all other appropriate documents; and
- After recording, give the Warranty Deed and Assignment of Sublease, and copies of any note and mortgage, closing statement or RESPA settlement statement, and the original owners title policy to the buyer; and
- After recording, give each release and any non-disturbance agreement to the seller; and
- After recording, give any original lender's title policy, and copies of the Warranty Deed and Assignment of Sublease, any closing statement or RESPA settlement statement, any other documents, any original note or other loan documents to, and do anything else reasonably required by, anyone loaning money to the buyer for the purchase; and
- Pay, out of the funds in escrow and after seller's approval, all of the closing costs and additional charges; and
- After recording, pay to seller or as the seller directs in writing all sums due the seller under the sales contract; and
- Refund any over-payment to the buyer.

**5.4 CONDITION OF TITLE; TITLE INSURANCE.** If asked, the escrow agent will arrange for a title insurance company to provide a title policy for the fractional share. A policy will be issued to protect the buyer and a separate policy will be issued to anyone making a loan to the buyer. The buyer is free to choose any title company licensed in the State of Hawaii, and the buyer may choose the title company by simply notifying the escrow agent in writing. If the buyer does not choose a title company, then the escrow agent must do so. Unless the sales contract says otherwise, the seller will pay the cost of the policy or policies and any additional fee charged by the escrow agent to arrange it, but not more than the premium charged under section 6.1C. The buyer's policy will show that the buyer's fractional share(s) are subject only to any mortgage signed by the buyer, the permitted encumbrances, and anything else which doesn't make the buyer's title unmarketable.

Part 6.  
ESCROW AGENT'S RIGHTS

**6.1 ESCROW AGENT'S FEES.** For its services under this escrow agreement, the escrow agent will be paid the following fees:

**A. ESCROW FEE.** For each sales contract which closes on or before January 1, 2001, an escrow fee of Four Hundred Sixteen And 66/100 Dollars (\$416.66) plus gross excise tax. Even if the sales contract covers more than one fractional share, no additional fee will be charged so long as (i) no more than three (3) fractional shares are covered; and (ii) the fractional shares are in the same apartment. The escrow fee will be charged to the buyer or the seller according to the sales contract. The escrow fee for each sale is due and payable when the Warranty Deed and Assignment of Sublease is recorded.

**B. CANCELLATION FEE.** For each sales contract canceled after the escrow agent has received it, a fair cancellation fee based on the work done but not less than Twenty-Five And No/100 Dollars (\$25.00) nor more than the full escrow fee. The cancellation fee will be charged to the buyer or the seller according to the sales contract.

**C. TITLE INSURANCE PREMIUM.** If the escrow agent arranges the buyer's title insurance policy, the company issuing the policy will be paid Three Hundred And No/100 Dollars (\$300.00) plus gross excise tax, for an owners policy of title insurance covering all fractional shares covered by a single sales contract. For an ALTA lender's policy, the company issuing the policy will be paid an additional One Hundred And No/100 Dollars (\$100.00) plus gross excise tax. Even if the sales contract covers more than one fractional share, no additional fee will be charged so long as (i) no more than three (3) fractional shares are covered; and (ii) the fractional shares are in the same apartment. This amount will be charged to the buyer or the seller according to the sales contract.

**D. DOCUMENT CHANGE FEE.** If the escrow agent, for any reason not its fault, is required to change any document or closing statement previously approved as to form and figures by the seller or buyer, the person asking for the change will pay a reasonable document change fee for each statement or document which is changed. The fee will not be more than Twenty-Five And No/100 Dollars (\$25.00) per statement or document changed plus any legal fees charged for redrafting.

**6.2 LIMITS ON THE ESCROW AGENT'S LIABILITY AND DUTIES.** The escrow agent will not be liable to the buyer, the

seller or anyone else for acting as directed by the contract documents, even if the seller, the buyer or anyone else instructs it to do otherwise. The escrow agent does not have to tell the seller or any buyer about any other transaction or facts it knows that do not prevent the escrow agent from obeying this agreement. The escrow agent need not determine if any sales contract it receives is valid or sufficient. For all purposes, the escrow agent may assume that:

A. All documents were signed by the persons whose signatures seem to be on them; and

B. Anyone who signed the documents is old enough and otherwise legally competent to sign and had the authority to do so; and

C. Anyone who signs for someone else has permission to do so; and

D. Any written notice or instruction from the seller or any lender is true and accurate.

**6.3 DISPUTES; INTERPLEADER.** The escrow agent is not required to decide disputes or resolve conflicting demands between the seller, any buyer, or anyone else. The escrow agent can wait for the dispute to be finally settled by the parties or by a court. If it chooses, the escrow agent may pay the buyer's funds to a court in the State of Hawaii and let the court decide who should have them. This is called an "interpleader" action. Once the escrow agent files an interpleader action, the escrow agent will be released from all further obligations with respect to the funds deposited with the court.

**6.4 INDEMNITY.** The buyer and the seller, jointly and severally (together and separately) promise to indemnify the escrow agent against (which means the buyer and the seller agree to pay in full) all costs, damages, judgments, legal fees and expenses reasonably incurred by the escrow agent for acting according to this escrow agreement. This does not, however, apply to anything caused by the negligence or misconduct of the escrow agent.

**6.5 CANCELLATION OF THIS ESCROW AGREEMENT.** The seller or the escrow agent can cancel this escrow agreement by giving written notice to the other fifteen (15) days in advance. All sales contracts accepted by the seller before the date of the cancellation notice will continue under this escrow agreement and will be closed by the escrow agent according to these escrow instructions just as if no notice of cancellation had been given. However, seller may have a different escrow company close any sales contract delivered to the escrow agent before the date of the termination. In that case, seller will pay the escrow agent a cancellation fee to be calculated as provided in section 6.1B. Escrow agent will receive no fee

for sales contracts accepted by the seller but not delivered to the escrow agent as of the date of the termination.

## Part 7. GENERAL MATTERS

**7.1 ASSIGNMENT.** The escrow agent cannot assign its rights nor delegate its duties under this escrow agreement without first getting the seller's written consent.

**7.2 CHANGES TO THIS AGREEMENT.** The escrow agent agrees to change this agreement as seller asks in order to comply with (i) the legal requirements of any state where the seller is registering the plan for sale, or (ii) the requests of seller's lenders. But the escrow agent need not agree to any change which reduces its fees or violates the law.

**7.3 GIVING NOTICES.** Any notice from the seller or the escrow agent to the buyer may be given by telephone or in writing, unless otherwise expressly stated. All other notices (including any from the buyer) must be in writing only. Written notices must be personally delivered or mailed by certified or registered mail, postage prepaid, addressed to the person at the address shown for each on the buyer's sales contract. If more than one person is listed as the buyer on a sales contract, a notice given to any of them will be considered notice to all. If the buyer is a corporation or partnership, the notice may be delivered or mailed to any officer or partner of the buyer. If the buyer is a limited liability company, the notice may be delivered or mailed (i) to any manager of a manager-managed company, or (ii) to any member of a member-managed company. The buyer, the seller or the escrow agent can change its address by sending written notice of the new address to the others. All written notices are considered given when they are personally received or are deposited in the mail.

**7.4 TIME IS OF THE ESSENCE.** Time is of the essence. This means that the parties must do what they promised to do when they promised to do it. If anyone's promise does not set a date or time for performance, then that person must keep his or her promises as soon as reasonably possible. A party who does not keep his or her promises on time has violated the contract documents.

**7.5 THE NATURE OF OUR OBLIGATIONS AND THE OBLIGATIONS OF PERSONS TAKING OVER OUR RIGHTS AND DUTIES.** The contract documents are for the benefit of and binding on the seller, the buyer, the escrow agent, and anyone who, by law or by agreement, stands in any of their places. (In legal terms such people are called their "*heirs*," "*personal representatives*," "*successors*" and "*assigns*.")

**7.6 CAPTIONS.** Seller has tried to appropriately divide

and caption the contract documents by their various sections. Captions are a part of the contract, but obviously cannot and do not completely or adequately explain each section or the entire agreement. Read with care each and every section of the contract documents and not just the captions alone. No court may treat the captions and headings as if they fully explain what the section means.

**7.7 HAWAII LAW; NO JURY TRIAL.** The escrow agent will perform all of its duties in the State of Hawaii. So this escrow agreement and all other parts of the contract documents pertaining to the escrow agent's duties are governed by and will be interpreted according to the laws of the State of Hawaii. The parties give up any right to a jury trial.

**7.8 CONFLICT WITH LAWS.** If some part of the contract

By signing this document, the escrow agent and the seller agree to all of the things written above. This agreement takes effect on \_\_\_\_\_, 19\_\_.

documents conflicts with a law or rule, the law or rule, and not that part of the contract documents, must be obeyed.

**7.9 THE PROVISIONS OF THE CONTRACT ARE "SEVERABLE" (SEPARATELY ENFORCEABLE).** If any court decides that some part of the contract documents is not legal or can be ignored for any reason, the court must treat the contract documents as if they never included that part. All of the remaining parts will continue to be effective and binding.

**7.10 LEGAL FEES.** In any lawsuit or other legal proceedings over this escrow agreement, the losers must pay the winner's costs and expenses, including reasonable legal fees.

OLD REPUBLIC TITLE AND ESCROW OF HAWAII, INC.

By \_\_\_\_\_  
Its

FRACTIONAL OWNERSHIP, INC.

By \_\_\_\_\_  
Its

## **EXHIBIT "A"**

### **List of Permitted Encumbrances**

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and its effect, if any, upon the area of the land of the project.
3. Lease dated June 16, 1971, recorded as aforesaid in Book 7836 at Page 275, as amended and as it may be further amended from time to time.
4. Section IVG Agreement for West Maui Areas dated November 13, 1979, recorded in Book 14221 at Page 609, by and between the County of Maui, Department of Water Supply, and Kahana Developers, Ltd., a Hawaii corporation, the authorized general partner of West Maui Shore Investors, a Hawaii limited partnership.
5. Declaration of Covenants, Conditions and Restrictions dated July 7, 1980, recorded in Book 14852 at Page 218, as supplemented by instrument dated June 19, 1981, recorded in Book 15693 at Page 254.
6. The restrictions, covenants, agreements, easements, obligations, conditions, reservations, and other provisions set forth in that certain "Declaration Of Horizontal Property Regime Under Chapter 514A, Hawaii Revised Statutes, The Sands Of Kahana", dated October 14, 1980, and recorded in the Bureau of Conveyances of the State of Hawaii in Book 15060 at page 527, and the Bylaws attached thereto, and Condominium Map No. 763, filed in said Bureau of Conveyances, and any amendments and supplements to any of the same.
7. Grant in favor of Maui Electric Company, Limited dated June 19, 1981, recorded in Book 15716 at Page 670, as amended by instrument dated January 15, 1982, recorded in Book 16238 at Page 699.
8. The terms, easements, restrictions, agreements, reservations, covenants, conditions and provisions contained in the apartment deed and sublease for each apartment made by and between West Maui Shores Investors, a Hawaii limited partnership, as "Grantor", and Myron A Resnick, unmarried, as "Sublessor", and West Maui Shores Investors, a Hawaii limited partnership, as "Apartment Owner" (grantee/sublessee), and any all amendments thereto.
9. Hold Harmless Agreement acknowledged June 14 and June 16, 1995, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 95-084525.
10. The Declaration of Covenants, Conditions and Restrictions for Shared Ownership at the Sands Of Kahana, dated May 12, 1999, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 99-083151, and any amendments thereto.
11. All other encumbrances of record which do not render title unmarketable, all of which are listed herein by this reference, including those described in the Condominium Declaration.