

R-691

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

JAN 22, 1998 09:00 AM

Doc No(s) 98-006637

/s/CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

LAND COURT SYSTEM

REGULAR SYSTEM

Total No. Of Pages: 7

Return by Mail Pickup () To:

MANCINI, ROWLAND & WELCH
Attention: Thomas D. Welch, Jr. T(808)384-147
33 Lono Avenue, Suite 470
Kahului, HI 96732

THIS DOCUMENT CONTAINS 7 PAGES

Tax Key No. (2) 4-3-05:18 and 18; (2) 4-3-01:70

Total No. of Pages: 7

UNILATERAL AGREEMENT AND
DECLARATION OF COVENANTS AND CONDITIONS
CONCERNING DEDICATION TO PARK USE UNDER
MAUI COUNTY CODE, SECTION 18.16.320E

THIS INDENTURE, made this 30th day of October, 1997, by MAUI USA, INC.,
whose mailing address is 505 Front Street, Suite 233, Lahaina, Hawaii 96761.

WITNESSETH:

WHEREAS, Declarant is the developer of the Kahana Ridge subdivision located at Kahana, Lahaina, Maui, Hawaii, consisting of 228 residential lots (the "Subdivision"), described on three subdivision file plans set forth on Exhibit A attached hereto and made a part hereof;

WHEREAS, the Declarant has set aside three specific lots for use as public parks pursuant to Section 18.16.320 of the Maui County Code, as a condition of final approval of the Subdivision by the County of Maui Department of Public Works & Waste Management, said three lots being specifically described on Exhibit B attached hereto and made a part hereof (the "Parks"), which will be privately owned and maintained for the public in accordance with Section 18.16.320E of said Code; and

WHEREAS, the Declarant wishes to implement the park use for the benefit of the public in perpetuity and to make the parks and the subdivision subject to the following covenants, conditions and restrictions.

NOW, THEREFORE, the Declarant makes the following declaration:

1. The Parks and the Subdivision are and shall be held subject to the covenants, conditions and restrictions contained herein, and all such covenants, conditions and restrictions shall be effective as to and shall run with the land as to the Parks and the Subdivision from and after the recording of this Declaration with the Bureau of Conveyances or the Land Court of the State of Hawaii, as the case may be.

2. The acquisition of any right, title or interest in or with respect to the each lot in the Subdivision by any person or persons, entity or entities, whosoever, shall be deemed

to constitute the acceptance of all of the covenants, conditions and restrictions of this Declaration by such person or persons, entity or entities, and upon said transfer of any right, title or interest in or with respect to any lot in the Subdivision, the same shall be held subject to and the transferee shall assume and be bound and obligated to observe and perform all of the covenants, conditions and any restrictions of this Declaration.

3. This Declaration and all the covenants, conditions and restrictions contained herein shall continue to be effective as to and run with the land in perpetuity, or until the same is released as to the Parks or the Subdivision or any part thereof by the County of Maui.

4. The term "Declarant" and any pronoun in reference thereto, wherever used herein, shall be construed to mean the singular or the plural, the masculine or the feminine or the neuter, and vice versa, and shall include any corporation, and shall be held to mean and include the "Declarant," Declarant's heirs, devisees, executors, administrators, personal representatives, successors and assigns.

5. The covenants, conditions and restrictions which are hereby declared as encumbrances on the Subdivision and the Parks in perpetuity are the following:

(a) The use of each Park shall be restricted to solely park and playground purposes and will be available for public use in accordance with all statutes, rules and regulations pertaining to County of Maui parks;

(b) The Parks will be maintained in accordance with all applicable State and County codes, in perpetuity, by the Kahana Ridge Association, Inc., a Hawaii non-profit corporation; (the "Association"), of which all owners of lots in the Subdivision are members

and said maintenance shall be performed by the Association at no cost to the County of Maui and at the sole expense of the owners of all lots in the Subdivision as a common expense of the Association. If the Association shall fail to maintain one or both of the Parks in accordance with this Declaration, the County of Maui is hereby empowered and authorized to perform said maintenance and the Association shall indemnify and reimburse the County of Maui for all expenses and outlays of every kind which shall have been incurred by the County in performing said maintenance, together with all attorney's fees and incidental expenses incurred by the County in enforcing this Agreement. If the assets of the Association are insufficient to meet the Association's indemnification and reimbursement obligations under the preceding sentence, the Association will assess and collect said funds from the owners of all lots in the Subdivision as a common expense and the County shall have a lien against each lot for its owner's share of said reimbursement and indemnification obligation of the Association until the all of said costs are reimbursed to the County in full.

(c) The provisions of Maui County Code, Section 18.16.320E will be faithfully observed.

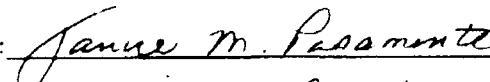
(d) A perpetual non-exclusive easement is hereby given to the public for pedestrian and vehicular access to and from the Parks via Kahana Nui Road.

Executed on the day and year first above written.

MAUI USA, INC.

APPROVED AS TO FORM
AND LEGALITY


Howard M. Sakashima
County of Maui

By: 
Its: Assistant Secretary

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 31 day of October, 1997, before me appeared Jane M. Hammond, to me personally known, who, being by me duly sworn, did say that she is the Assistant Secretary of MAUI USA, INC., a Nevada corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said Officer acknowledged said instrument to be the free act and deed of said corporation.

LS

Cady A. Wilson
Notary Public, State of Hawaii.

My commission expires: 11-21 98

EXHIBIT A

Those certain subdivided lots located at Kahana, Lahaina, Maui, Hawaii, situated on the easterly side of Honoapiilani Highway [F.A.P. No. RF-030-1(5)], described as follows:

1. Subdivision No. 1. Lots numbered 1 to 223, inclusive, as described on the plan entitled "Kahana Ridge Subdivision", dated August 21, 1997, prepared by R.T. Tanaka Engineers, Incorporated, and recorded in the State of Hawaii Bureau of Conveyances as File Plan No. 2209, but excluding:

(a) Lots 81 to 90, inclusive, which have been consolidated and resubdivided into certain lots described in the file plan for Subdivision No. 2 described below; and

(b) Lots 1 to 3, 96, 97, 117, 127 and 128, which have been consolidated and resubdivided into certain lots shown on the recorded file plan to Subdivision No. 3, described below.

2. Subdivision No. 2. Lots numbered 1 to 37, inclusive, as shown on the plan entitled "Kahana Ridge Subdivision No. 2", dated October 24, 1997, prepared by R.T. Tanaka Engineers, Incorporated, and recorded in the State of Hawaii Bureau of Conveyances as File Plan No. 2210.

3. Subdivision No. 3. Lots 1 to 30, inclusive, as shown on the plan entitled "Kahana Ridge Subdivision No. 3", dated October 23, 1997, prepared by R.T. Tanaka Engineers, Incorporated, and recorded in the State of Hawaii Bureau of Conveyances as File Plan No. 2211.

EXHIBIT B

Description of Parks

The "Park" consists of three lots, located at Kahana, Lahaina, Maui, Hawaii, easterly of Honoapiilani Highway [F.A.P. No. RF-030-1(5)] described on the plan entitled Kahana Ridge Subdivision No. 3, dated August 21, 1997, prepared by R.T. Tanaka Engineers, Incorporated, recorded in the State of Hawaii, Bureau of Conveyances as File Plan No. 2211, as lots numbered 1 (7,612 square feet), 2 (6,074 square feet) and 24 (58,780 square feet).